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No. 94-6615

IN THE
Supreme Court of the United States
OCTOBER TERM, 1994

CARL THOMPSON,
Petitioner,
v.

PATRICK KEOHANE, Warden
BRUCE M. BOTELHO, Attorney General,
State of Alaska,
Respondents.

On Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit

JOINT APPENDIX

CYNTHIA M. HORA
Assistant Attorney General
Office of Special Prosecutions
and Appeals
Alaska Department of Law
310 K Street, Suite 308
Anchorage, Alaska 99501
(907) 269-6250
Counsel for Respondent

JULIE R. O'SULLIVAN *
(Appointed by this Court)
Associate Professor of Law
GEORGETOWN UNIVERSITY LAW
CENTER
600 New Jersey Avenue, N.W.
Washington, D.C. 20009
(202) 662-9394
** Counsel of Record for
Petitioner*

TABLE OF CONTENTS

	Page
Docket Sheet	1
Memorandum Decision of the Superior Court of the State of Alaska (March 17, 1987)	3
Opinion of the Court of Appeals of the State of Alaska (January 20, 1989)	10
Order of the Supreme Court of the State of Alaska (May 4, 1989)	23
Initial Report and Recommendation of U.S. Magis- trate Judge, United States District Court for the District of Alaska (December 29, 1992)	25
Minute Order from Chambers of U.S. Magistrate Judge, United States District Court for the District of Alaska (September 28, 1993)	32
Order of the United States District Court for the Dis- trict of Alaska (February 18, 1993)	33
Order from Chambers of the United States District Court for the District of Alaska (December 7, 1993) ..	35
Judgment of the United States District Court for the District of Alaska (December 8, 1993)	38
Minutes of the United States District Court for the District of Alaska (January 11, 1994).....	39
Memorandum Decision of the United States Court of Appeals for the Ninth Circuit (August 11, 1994)	40
Excerpts from Transcript of September 15, 1986 State- ment of Carl Thompson	43
Order of Supreme Court of the United States granting certiorari and leave to proceed in forma pauperis, January 23, 1995	80

RELEVANT DOCKET ENTRIES

Date	Proceedings
1991	
Apr 23	pet for writ of habeas corpus.
26	Motion referring case to Mag Judge Branson per rule 4/5/11.
May 24	ORDER directing deft to show cause why writ shldnt be grnted.
June 13	ORDER that deft have til 9/1/91 to file rspnse to petition for writ of
Aug 1	defts response to pet for writ of hab corp.
Sept 03	reply brief.
1992	
Feb 03	Fld MAG B MO dtd 2/3 that pltf ensl have 15 days to file information required by L.R.3 or show cause why they shld be exenipt.
1993	
Feb 18	petition DISMISSED.
June 17	notice of appeal.
23	certificate of prob.
23	Fld Deft's Opp. to late filed not. of appeal and mot. for prob. cause.
25	ptf aff of D. Dyer.
25	ptf aff of M. Friedman.
28	Fld ptf motion to vacate judg for reconsideration & time to file objs to initial R&R petition for habeas corpus w/att aff.
30	Fld defs opp to ptf mtn to vacate jmt, mtn for recnsdratn & mtn for addlt time to file objs to initial R&R.

Date	Proceedings
1993	
July 19	Fld ORDER re pltf mtn to vacate jmt & allow new 10 day period to file objs to MJ R&R GRANTED; mtn for cert of probable cause DENIED as not ripe. cc cnsl, MJ Branson.
29	Fld pltf obj to initial R&R re dsmsl of petition.
Sept 28	Fld MO re petitioners object to initial R/R referred to MJ B for a final R/R. Cy cnsl.
29	Fld MJ MO that MJ declines to modify int R&R & that this matter is now forwarded to trial judge. cc cnsl Judge Sedwick
Dec 8	Fld ORDER DENYING pltf's petition at #1. cc cnsl, MJ Branson.
09	FLD JMT dismissing petition. cy cnsl.
27	Fld Pltf's notice of appear to dkt #28. cc: cnsl, Judge Sedwick, 9CCA.
27	Fld Pltf's request for certificate of probable cause.
27	Fld Pltf's request to proceed in forma pauperis.
1994	
Jan 11	Fld MO petitioner request for certificate of probable cause is GRANTED.
11	Fld order GRANTING pltf's motion to proceed in F/P.
27	Fld cy 9CCA time schedule order. 94-35052.

IN THE SUPERIOR COURT
FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT

No. 4FA-S86-02644 Cr.

STATE OF ALASKA,

Plaintiff,

v.

CARL K. THOMPSON,

Defendant.

MEMORANDUM DECISION

Defendant, Carl K. Thompson, has filed three motions.

1. Motion to Dismiss Count II, tampering with physical evidence (AS 11.56.610)
2. Motion to Suppress Evidence seized from residence
3. Motion to Suppress Statement taken Sept. 15, 1986

Facts

On August 11, 1986, defendant Carl K. Thompson (Thompson) stabbed his ex-wife (Dixie) and killed her. The stabbing took place at their residence at 15.1 Mile Chena Hot Springs Road. On the same date, Thompson disposed of Dixie's body in a gravel pit at 10.5 Mile on the Elliott Highway. He threw the knife and her personal belongings in a public dumpster at the Valley View Center located at 22.5 Mile Chena Hot Springs Road.

On September 10, 1986, Dixie's body was discovered. At the time of discovery, her identity was not known.

To assist in identifying the body, a press release was issued describing the body and requesting assistance in identifying it.

On the day of the press release, Thompson contacted the Alaska State Troopers and reported that his ex-wife Dixie had been missing since August 11, 1986, and she fit the description of the body that had been found.

The defendant gave a tape-recorded statement on September 11, 1986, at which time he appeared cooperative and expressed concern for the victim's well-being. On September 12, 1986, the defendant Thompson gave another statement expressing his desire to cooperate with the police in solving the murder.

Investigator Stockard of the Alaska State Troopers contacted Thompson on September 15, 1986, by telephone requesting that he come to trooper headquarters to identify property that the police believed belonged to Dixie. Thompson came to Alaska State Trooper headquarters and was interviewed by Investigator Stockard and Investigator Hard. Thompson identified the property that had been recovered as belonging to Dixie and continued to talk to the troopers concerning the deceased.

During the course of the interview, Thompson confessed to killing Dixie.

Motion to Dismiss Count II—Tampering with Physical Evidence

Defendant claims that since, at the time the body was thrown in the gravel pit and the knife in the dumpster there was no investigation pending, he can not be convicted of tampering with physical evidence.

AS 11.56.610 provides in pertinent part:

A person commits the crime of tampering with physical evidence if the person (1) destroys, mutilates,

alters, suppresses, conceals, or removes physical evidence with intent to impair its verity or availability in an official proceeding or a criminal investigation: (4) does any act described by (1), (2), or (3) of this subsection with intent to prevent the institution of an official proceeding.

There is no requirement under subparagraph (4) that an official proceeding be in progress. The intent required is to prevent the institution of an official proceeding. *Williamson v. State*, 692 P.2d 965, 974 (Alaska App. 1984).

Therefore, defendant's Motion to Dismiss Count II, Tampering with Physical Evidence is DENIED.

Motion to Suppress Evidence Seized from Residence

Defendant has filed a motion to suppress evidence seized from his residence at 15.1 Mile Chena Hot Springs Road pursuant to search warrant numbered SW-237.

According to court documents, search warrant numbered SW-237 was never executed. Instead, a new search warrant numbered SW-239 was issued. SW-239 was issued based on the affidavit for SW-237 as well as additional testimony of Investigator Christopher Stockard. That search warrant was served on September 15, 1986.

Since SW-237 was never executed, defendant's Motion to Suppress Evidence Seized from Residence pursuant to SW-237 is DENIED.

Motion to Suppress Statement

Defendant has moved to suppress the statement which was taken on September 15, 1986. In the statement he admits to stabbing Dixie and disposing of her body. Thompson claims that the statement should be suppressed because he was not given a *Miranda* warning prior to the interrogation. He further claims that the interrogation was overbearing and the statement was a product of psychological coercion, and therefore not voluntary.

At the time of the interrogation by Investigator Stockard and Investigator Hard on September 15, 1986, Thompson had become the focus of the investigation and in fact Investigators Stockard and Hard believed he had killed Dixie and disposed of her body. A search warrant had been issued for Thompson's residence and truck prior to his interview on the 15th. In fact, the search of Thompson's residence pursuant to the search warrant had commenced prior to Investigator Stockard requesting him to come to police headquarters and was still in progress during the course of the interview.

After the body was identified, the police briefly questioned Thompson on two occasions prior to September 15. On the 15th he was asked to come to the Alaska State Troopers' headquarters on Peger Road to identify certain items believed to belong to the deceased. The telephone call requesting him to come to the police station was recorded. Thompson went to the police station in his own vehicle. On arrival, he was told he was free to leave at any time.

The entire interrogation, which lasted approximately two (2) hours was tape-recorded and was conducted by Investigators Stockard and Hard who were dressed in plain clothes with no weapons visible. On several occasions throughout the interrogation, Thompson was assured that he was not in custody, not under arrest and could leave at any time. During the interview Thompson asked questions to reassure himself that this was in fact the case and in fact at the conclusion of the interrogation, even after admitting to stabbing Dixie, he was permitted to leave. His truck was seized at the conclusion of the interview in order to be searched for evidence. After the interview was over, a trooper drove him to his residence. He was arrested approximately two hours later pursuant to an arrest warrant which was requested by Investigator Stockard based on the affidavits for the search warrant for his residence and vehicle and the statement made on the 15th.

At the time of the interrogation on September 15, 1986, Investigator Stockard knew Thompson was awaiting sentencing on a felony theft case. In the theft case he was represented by retained counsel and had entered a plea of no contest to the charge. Investigator Stockard assumed Thompson knew he had a right to remain silent and not talk to the officers.

During the interview, Thompson was advised that anything Thompson told them favorable to his case would be brought to the attention of the District Attorney as well as the grand jury and they would investigate any leads favorable to Thompson.

The information supplied by Thompson, namely, that it was self-defense or heat of passion was furnished to the District Attorney as well as the grand jury.

Alaska has adopted an objective, reasonable person perspective as a standard for determining whether an interviewed person is in custody. *Hunter v. State*, 590 F.2d 388, 395 (Alaska 1970). The test must be applied on a case-by-case basis. Short of an actual arrest, a person will be deemed "in custody" when "a reasonable person would feel he was not free to leave and break off police questioning." (*Ibid.* at 895) There are a number of factors to be considered in making this "in custody" determination. *When* and where it occurred, how long it lasted, how many police officers conducted the interrogation, what was said and done, whether or not there were actual physical restraints or indicia of physical restraints, and whether the defendant was being questioned as a suspect or witness. The court must also consider how the defendant got to the police station, whether it was on his own, in response to a police request or escorted by the police and whether or not he was permitted to leave after the statement.

In this case, the defendant appeared in response to a request by the troopers to identify certain personal items

of his ex-wife. The interrogation was conducted by two plain-clothed police officers without any signs of weapons. Thompson was assured that he was free to go at any time and in fact at the conclusion of the interrogation was not arrested and was driven home by Investigator Hard.

During the course of the interview, the defendant by his questioning, reaffirmed the fact that the police would permit him to leave.

In applying the *Hunter* test to the facts of this case, the court concludes that the defendant was not in custody and *Miranda* warnings were not required.

This does not end the inquiry since the defendant has also asserted that his statement was not voluntary based on the type of questioning and the mental coercion involved. The court must apply a totality of circumstances test in making a decision on the voluntary nature of the statement. The state must show by a preponderance of the evidence that confession was voluntary. *Sprague v. State*, 590 P.2d 410, 413 (Alaska 1979).

From an examination of the overall circumstances of the interrogation in this case, the state has met its burden and the statement was in fact voluntary. Therefore, defendant's Motion to Suppress the statement taken on September 15, 1986, is DENIED.

The court has examined the statement of September 15, 1986, made by Thompson as viewed by an objective reasonable person at the time the statement was made, that is, whether or not he as a reasonable person would believe he was free to leave. The court has concluded that Thompson as a reasonable person would feel he could leave. However, in viewing the conduct of the police after the statement, that is, arresting the defendant by means of a warrant within two hours of the statement, appears to be a devious police tactic. It would appear that the police felt they could obtain a statement implicat-

ing the defendant by doing so, letting him return home and arrest him immediately.

Under the total circumstances of this case, that fact alone does not make the confession inadmissible, although makes the question very close.

DATED at Fairbanks, Alaska this 17 day of March, 1987.

/s/ Jay Hodges
JAY HODGES
Superior Court Judge

COURT OF APPEALS OF ALASKA

 No. A-2183

CARL THOMPSON,

Appellant,

v.

STATE OF ALASKA,

Appellee.

 Jan. 20, 1989

Before BRYNER, C.J., and COATS and SINGLETON,
JJ.

OPINION

COATS, Judge.

Carl Thompson was convicted, following a jury trial, of one count of first-degree murder, AS 11.41.100, an unclassified felony, and of one count of tampering with physical evidence, AS 11.56.610, a class C felony. Judge Jay Hodges sentenced Thompson to ninety-nine years on the first-degree murder conviction and to a consecutive five years on the tampering with physical evidence conviction. Thompson appeals his conviction and sentence. We affirm Thompson's conviction, but reverse his sentence.

On September 10, 1986, two moose hunters found the body of a dead woman floating in a gravel pit lake off the Elliott Highway. The hunters notified the Alaska State Troopers. The troopers discovered that the woman

had been stabbed twenty-nine times. The body had been thrown into a water-filled gravel pit after being wrapped in chains, a bedspread, and a tent fly. The troopers advertised for information concerning the identity of the body, and directed the public's attention to a unique tattoo on the body. At the urging of his girlfriend, Carl Thompson called the troopers and reported that his former wife fit the description of the body which they had found and told the troopers that she had been missing since mid-August. Thompson told the troopers that he had taken his former wife to the airport in mid-August and that he had not seen her again. Through a dental examination, the body was conclusively identified as Thompson's former wife, Dixie Thompson.

On September 15, 1986, the trooper investigation had focused upon Carl Thompson as the person who had killed Dixie Thompson. Trooper Cris Stockard contacted Thompson and asked him to come to the trooper office to identify some property belonging to Dixie Thompson. However, Trooper Stockard's primary reason for contacting Thompson was to question him. Thompson went to the police station and was questioned extensively by Trooper Stockard. During the questioning, Trooper Stockard consistently assured Thompson that he was not under arrest and that he was free to go at any time. Thompson ultimately confessed to killing his former wife. Following his statement to the troopers, Thompson was allowed to leave the trooper headquarters. However, he was arrested approximately two hours later and was charged with murder in the first degree.

While Trooper Stockard was interviewing Thompson at the trooper headquarters, other troopers were executing a search warrant at Thompson's residence on Chena Hot Springs Road. The troopers seized a handgun during the search. Additionally, Luminol testing was done to check for the presence of blood in the residence. The test revealed a large concentration of blood in the kitchen

area of the residence. The troopers also seized Thompson's truck. The tires of Thompson's truck were of similar size and tread design to the tire impressions that the troopers had found near where Dixie Thompson's body had been discovered.

At trial, Thompson defended on the ground that he initially stabbed Dixie Thompson in self-defense. Thompson claims that he then lost control and killed Dixie in the heat of passion. Thompson asked the jury to convict him of the lesser-included offense of manslaughter. The jury ultimately convicted Thompson of murder in the first degree.

During deliberations, the jury sent a note to Judge Hodges asking for clarification of Jury Instruction No. 14.¹ The note stated:

¹ Jury Instruction No. 14 stated:

It is a defense to Murder in the First Degree, and Murder in the Second Degree involving intent to cause serious physical injury OR knowing conduct, if the defendant acted in a heat of passion at the time he killed Dixie Gutman Thompson before there had been a reasonable opportunity for the passion to cool, when the heat of passion resulted from a serious provocation by the intended victim.

"Heat of passion" as the term is used in our law means such passion as naturally would be aroused in the mind of an ordinarily reasonable person in the same or similar circumstances as those in question, and such as would cause him to act rashly, without reflection and deliberation, and from passion rather than judgment. "Passion" or "heat of passion" is a term which encompasses a broad range of intense emotions including, but not limited to, fear, fright, terror, anger, rage or wild desperation.

"Serious provocation" as used in these instructions means conduct which is sufficient to excite an intense passion in a reasonable person in the defendant's situation, other than a person who is intoxicated, under the circumstances as he reasonably believed them to be. Insulting words, or hearsay reports of conduct engaged in by the intended victim, do not alone or in combination with each other, constitute serious provocation.

We need a legal interpretation of Page 14 referring to "serious provocation" [sic] "Can an intoxicated [sic] person use serious provocation and/or Heat of Passion as a means of Defense."

The judge instructed the jury as follows:

An intoxicated defendant can avail himself of the heat of passion and serious provocation defense but his conduct must be judged by how a reasonable sober person in the defendant's situation would react.

Defense counsel stipulated to that answer being given in response to the jury's question. Defense counsel, however, went on to argue that an additional instruction should be given on diminished capacity based on intoxication. After hearing argument from the defense and the prosecution, Judge Hodges declined giving any further instruction on intoxication.

Thompson argues that it was reversible error for the trial court to refuse to instruct the jury on a defense of diminished capacity based on intoxication. He suggests that the instruction was mandatory and requires reversal if it is "possible that [this] omission contributed to the jury's verdict[.]" *Stork v. State*, 559 P.2d 99, 101 (Alaska 1977).

At trial, Thompson's defense was that he was guilty only of the lesser-included offense of manslaughter because he acted in the heat of passion. Thompson also defended on the ground that he had diminished capacity to form an intent to kill based upon a mental disease or defect. However, it is clear that Thompson did not assert, prior to jury deliberation, the defense of diminished capacity based upon intoxication. He argues, however, that because the state contended that he was intoxicated when he committed the offenses and suggested that he was a mean angry drunk, such an instruction should have been given.

Both Thompson and the state cite *Des Jardins v. State*, 551 P.2d 181 (Alaska 1976). In *Des Jardins*, the supreme court stated:

When a jury asks a judge about a matter on which it has received adequate instruction, the judge may in his or her discretion refuse to answer, or may refer the jury to the earlier instruction. When, however, the jury appears to be confused about a legal issue, and the resolution of the question is not apparent from an earlier instruction, the trial judge has a "responsibility to give the jury the required guidance by a lucid statement of the relevant legal criteria. When a jury makes explicit its difficulties, a trial judge should clear them away with concrete accuracy."

Id. at 190 (footnote omitted).

In addition, Thompson cites to III *Standards for Criminal Justice* § 15-4.3 (2d ed. 1986). However, the Commentary to Standard 15-4.3(b) provides in part: "It is generally agreed that, when giving instructions in response to a jury request, the judge may confine himself or herself to the particular questions asked by the jury and need not give additional instructions, even though requested to do so by the defendant." *Id.* (footnote omitted).

We conclude that Judge Hodges did not abuse his discretion in refusing to instruct the jury on the defense of diminished capacity due to intoxication. Thompson's main defense was that he acted in the heat of passion and was therefore guilty of manslaughter, rather than first-degree murder. The jury question focused on this defense and asked the judge whether a person who was intoxicated could avail himself of heat of passion as a defense. Judge Hodges' instruction directly answered the jury's question. Thompson never argued that he was incapable of forming an intent to kill based on diminished

capacity due to intoxication. Although there was evidence that suggested that Thompson had been intoxicated during the events which ultimately led to Dixie Thompson's death, neither the state nor Thompson had suggested that Thompson was incapable of forming a specific intent to kill. There is no reason to believe that the jury independently was focusing on this issue. Rather, the jury seems to have focused on the major defense which Thompson raised. We find no abuse of discretion.

Prior to trial, Thompson argued that the statement which he made to Trooper Stockard on September 15, 1985, should be suppressed. Thompson argued in the trial court that the troopers were required to give him *Miranda* warnings before he talked to them and contended that his statement was not voluntary. Judge Hodges found that the troopers were not required to give Thompson *Miranda* warnings because Thompson was not in custody at the time that he made the statement. He also found that Thompson's statements to the troopers were voluntary.

In *Hunter v. State*, 590 P.2d 888 (Alaska 1979), the supreme court held that the police were required to give a person *Miranda* warnings where he was subject to custodial interrogation. The court adopted an objective reasonable person test for determining whether a suspect was in custody. *Id.* at 895. The court asked:

At least three groups of facts would be relevant to this determination. The first are those facts intrinsic to the interrogation: when and where it occurred, how long it lasted, how many police were present, what the officers and defendants said and did, the presence of actual physical restraint on the defendant or things equivalent to actual restraint such as drawn weapons or a guard stationed at the door, and whether the defendant was being questioned as a suspect or as a witness. Facts pertaining to events before the interrogation are also rele-

vant, especially how the defendant got to the place of questioning—whether he came completely on his own, in response to a police request, or escorted by police officers. Finally, what happened after the interrogation—whether the defendant left freely, was detained or arrested—may assist the court in determining whether the defendant, as a reasonable person, would have felt free to break off the questioning.

Id. at 895 (footnotes omitted). See also *Quick v. State*, 599 P.2d 712 (Alaska 1979); *Lowry v. State*, 707 P.2d 280 (Alaska App. 1985).

In arguing that Judge Hodges erred in finding that the police were not required to give Thompson *Miranda* warnings, Thompson does not really argue that he was in custody when the interview occurred. He concedes that "[he] may or may not have been in a custodial setting at the time he was interrogated." Instead, Thompson argues that the police intentionally interrogated him in such a way as to circumvent the requirements of *Miranda*. He contends that the police went out of their way to set up circumstances where Trooper Stockard's questioning of Thompson would not be custodial so that Trooper Stockard would not have to give Thompson *Miranda* warnings. In his written decision finding against Thompson on this issue, Judge Hodges appears to have found that the police intentionally arranged to interrogate Thompson in a non-custodial manner to increase the likelihood that they would get a statement from him. Judge Hodges described this as a "devious police tactic." However, Judge Hodges concluded that the proper test was whether a reasonable person would believe that he was free to leave. Judge Hodges concluded that Thompson, as a reasonable person, would have felt free to break off the interrogation and leave. It seems clear that Judge Hodges applied the correct test under *Hunter*. As we have pointed out earlier, Thompson does not really

contend that he was in custody at the time that he was questioned by Trooper Stockard. Thompson, responding to Trooper Stockard's request, went to the trooper headquarters on his own. Trooper Stockard assured Thompson numerous times that he was free to leave, that he was not under arrest, and that after the questioning finished, Thompson was free to go. And, in fact, Thompson was allowed to leave after the interrogation ended. Under these circumstances, we agree with Judge Hodges that the appropriate test is the one set forth by the supreme court in *Hunter*. Applying the *Hunter* test, it seems clear that Thompson was not in custody and that the police were not required to give Thompson *Miranda* warnings.

Thompson next argues that his statement was not voluntary. Thompson's primary complaint is the manner in which the troopers conducted the interview. Thompson points out that the troopers played on his sympathies, minimized his guilt, and placed much of the blame for the homicide on the victim. Trooper Stockard told Thompson that it was important for Thompson to tell his side of the story so that Trooper Stockard could present that version to the district attorney. Trooper Stockard warned Thompson that if he did not say anything, the district attorney might conclude that Thompson had committed murder in the first degree. Trooper Stockard suggested that if Thompson gave his side of the story, it was possible that Thompson might only be guilty of a lesser charge, such as negligent homicide, and would be facing a minimal sentence such as two to five years.

In his brief, Thompson sets out the correct legal standard for reviewing the voluntariness of confessions: "The Supreme Court has consistently made clear that the test of voluntariness is whether an examination of all the circumstances discloses that the conduct of law enforcement was such as to overbear [the defendant's] will to resist and bring about confessions not freely self deter-

mined." *Stobaugh v. State*, 614, P.2d 767, 772 (Alaska 1980) (quoting *United States v. Ferrara*, 377 F.2d 16, 17 (2nd Cir.1967)).

In *Sprague v. State*, 590 P.2d 410 (Alaska 1979), the Alaska Supreme Court articulated a test for determining whether a confession was voluntary or involuntary. The court held that "[i]n determining whether a confession is voluntary or is the 'product of a mind overborne by coercion,' this court has previously stated that it will consider the 'totality of circumstances surrounding the confession' and conduct an independent review of the record." *Id.* at 413 (footnote omitted). In considering the totality of the circumstances, the following are relevant criteria: (1) age, mentality, and prior criminal experience; (2) length, intensity, and frequency of interrogation; (3) the existence of physical deprivation or mistreatment; and (4) the existence of threat or inducement. *Id.* at 414.

In *Harris v. State*, 678 P.2d 397 (Alaska App.1984), *rev'd on other grounds*, *Stephen v. State*, 711 P.2d 1156 (Alaska 1985), this court dealt with the issue of inducement. The police told Harris that if he cooperated with them by telling the truth, his cooperation would be brought to the attention of the prosecutor. This court concluded that such "inducement is not improper as long as, under the totality of the circumstances, the defendant's confession is voluntary." *Id.* at 405-06. See also *Plant v. State*, 724 P.2d 536, 541 (Alaska App. 1986) (defendant's confession voluntary and will not overborne even though defendant was told by police that he was in a lot of trouble and that he might benefit from cooperation).

Thompson was twenty-nine years old at the time he made the confession. Thompson argues that he dropped out of high school and that he was "borderline retarded." However, Dr. Feldman, the psychologist and defense witness who testified about Thompson's retardation, actually testified that he believed that Thompson was of

low average intelligence. Dr. Feldman testified that Thompson's scores on the intelligence tests were inaccurate on the low side because of the circumstances under which the tests were given.

Thompson has had "prior criminal experience." He was convicted of minor in possession in 1975; receiving or concealing stolen property in 1976; disorderly conduct in May 1986; and second-degree theft in October 1986. Thompson was dealing with the police on the theft offense prior to his interrogation.

Thompson went voluntarily to the police station at the request of the troopers. He was not advised of his *Miranda* rights. He was, however, advised several times that he was free to leave during the interview, prior to his confessing. The interview lasted about two hours. He was interviewed by two troopers in a small interview room. Neither trooper was in uniform, nor were guns displayed.

The statements which the police made to Thompson to encourage him to talk to them appear to be similar to the inducements which we concluded were not improper in *Harris* and in *Plant*. We conclude that the inducements which the police made to Thompson were not "such as to overbear [the defendant's] will to resist and bring about confessions not freely self-determined." We conclude that Thompson's confession was voluntary.

During the trial, the state played the portion of Thompson's statement where he admitted killing his former wife. Thompson asked to have the entire statement played to the jury. Judge Hodges concluded that the portion of the statement that was played was a fair assessment of what occurred and ruled against playing the first portion of the tape. Thompson points to Alaska Evidence Rule 106, which states:

Remainder of, or Related Writings or Recorded Statements.

When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require him at that time to introduce any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it.

The decision whether to admit or to exclude evidence under A.R.E. 106 is reviewed under an abuse of discretion standard. *Stumpf v. State*, 749 P.2d 880, 899 (Alaska App.1988). In *Stumpf*, we held that:

[W]hen the state . . . presents one part of a conversation or statement . . . , the defendant may be entitled to offer or require the state to offer, the rest of the statement or conversation in order to set the context for statements already in evidence. Nonetheless, the admitted portions of the statements need not be admitted if they are not relevant to explain or clarify the previously admitted statement.

Id. (citation omitted).

The statement which Thompson wished to admit in its entirety was an approximate two-hour interview. Much of that interview consisted of Trooper Stockard talking to Thompson. Under these circumstances, we conclude that Judge Hodges did not abuse his discretion in determining that, on direct examination, the state could introduce only the part of the statement where Thompson admitted killing his former wife. Judge Hodges indicated that he might or might not permit certain portions of the statement to be played to the jury during cross-examination. Thompson has not pointed out to us specific portions of the tape which he was not permitted to play to the jury either for purposes of cross-examination or as evidence during his case-in-chief. We conclude that Judge Hodges did not err in limiting the portion of the

tape which was played to the jury during the state's case-in-chief.

Thompson next contends that his sentence was excessive. Thompson was convicted of murder in the first degree, which is an unclassified felony with a maximum penalty of ninety-nine years and a minimum penalty of twenty years. He was also convicted of tampering with physical evidence, which is a class C felony with a maximum penalty of five years. Judge Hodges sentenced Thompson to the maximum sentence on both convictions, and imposed those sentences consecutive to each other. Thus, Thompson has a composite sentence of one hundred and four years.

At the time of sentencing, Thompson was thirty years old. Thompson had previously been convicted of four minor misdemeanor offenses. Thompson was not sentenced to imprisonment on any of the misdemeanor offenses. At the time that he committed the present offense, Thompson was charged with theft in the second degree, a class C felony, AS 11.46.130(a)(1). Thompson was ultimately sentenced to three years with two and one-half years suspended on the theft offense. In sentencing Thompson, Judge Hodges concluded that Thompson might not be a worst offender because he did not have a long history of criminal involvement. However, he classified the murder itself as a worst offense. He emphasized the explosive relationship that existed between Carl and Dixie Thompson throughout the course of their relationship.

Judge Hodges indicated that there was evidence that Thompson was at least involved with the use of drugs for his personal use and that a possible motive for the killing may have been that Thompson was concerned that Dixie Thompson might inform on him. Judge Hodges indicated that he had difficulty believing Thompson's version that he acted either in self-defense or in the heat of passion because Thompson's version of the

offense did not match the physical evidence. In concluding that this was a particularly aggravated murder offense, Judge Hodges pointed out that Thompson had stabbed his former wife twenty-nine times. Thompson then disposed of the body by taking it to a gravel pit in an isolated area and wrapping the body with canvas and chains.

We conclude that Judge Hodges was not clearly mistaken in imposing the maximum sentence of ninety-nine years for murder in the first degree. In *Riley v. State*, 720 P.2d 951, 952 (Alaska App.1986), we pointed out that we were not aware of any decision of this court or the Alaska Supreme Court which held that a maximum sentence for murder in the first degree was excessive. In *Riley*, we pointed out that under the present first-degree murder statute, many cases which would have been second-degree murder under the former statutes were now included as murder in the first degree. We stated that "[i]n such cases, sentence appeals dealing with second-degree murder convictions under prior law may well provide an appropriate point of reference." *Id.* at 952 n. 1. In the instant case, however, we believe that the reasons which Judge Hodges gave were sufficient to justify imposition of the maximum sentence.

We do not believe, however, that the record supports imposing the sentence for tampering with evidence consecutively to the ninety-nine-year murder sentence. In order to justify imposing a sentence consecutive to the ninety-nine-year murder sentence, the trial court would have to find that confinement of the defendant for the aggregate period of the consecutive sentence was necessary to protect the public. *Mutschler v. State*, 560 P.2d 377 (Alaska 1977).² We do not believe that a sentence

² In *State v. Andrews*, 707 P.2d 900, 908, 910 (Alaska App.1985), *aff'd per curiam*, 723 P.2d 85 (Alaska 1986), we concluded that AS 12.55.025(e) established a legislative preference for consecutive sentences. In *Jones v. State*, 744 P.2d 410, 411 (Alaska App.1987),

in excess of ninety-nine years can be justified except where the trial court finds that in order to protect the public the defendant must spend the rest of his life in prison without any possibility of parole. *See, e.g., Nukapigak v. State*, 663 P.2d 943 (Alaska 1983); *Hasting v. State*, 736 P.2d 1157 (Alaska App.1987). Where the record did not support this finding, we have previously not approved sentences in excess of the ninety-nine-year maximum term for murder. *Ridgley v. State*, 739 P.2d 1299 (Alaska App.1987); *Page v. State*, 657 P.2d 850 (Alaska App.1983).

Judge Hodges did not find that it was necessary to sentence Thompson to spend the rest of his life in prison without any possibility of parole to adequately protect the public. We do not believe that the record in this case would support such a finding. We do not believe that the record supports the conclusion that Thompson must be incarcerated for the remainder of his life without any possibility of parole. We accordingly conclude that the trial court should not have imposed the sentence for tampering with physical evidence consecutively to the ninety-nine-year sentence for murder. We therefore find Thompson's sentence to be clearly mistaken. We order the trial court to impose Thompson's sentence for tampering with evidence concurrent to his sentence for murder.

The conviction is AFFIRMED. The sentence is VACATED and the case is REMANDED for resentencing consistent with this opinion.

we indicated that the legislative preference for consecutive sentences must be interpreted to expand the situations where the court may impose consecutive sentences. In *Jones*, we upheld the trial judge's conclusion that Jones' offenses were so serious that a consecutive sentence was necessary to reflect the seriousness of the crime. *Jones*, 744 P.2d at 412. However, we do not believe that the record in this case establishes any substantial reason for imposing a sentence greater than the ninety-nine year maximum sentence for first-degree murder.

IN THE SUPREME COURT
OF THE STATE OF ALASKA

Supreme Court No. S-3200

CARL THOMPSON,
Petitioner,
v.
STATE OF ALASKA,
Respondent.

Court of Appeals No. A-2183
Trial Court No. 4FA 86-2644 Cr.

Before: Matthews, Chief Justice, Rabinowitz, Burke
and Compton, Justices. [Moore, Justice, not
participating.]

ORDER

On consideration of the petition for hearing, filed on
March 6, 1989, and the response to the petition, lodged
on March 28, 1989 and filed pursuant to the order of
March 31, 1989,

IT IS ORDERED:

The petition for hearing is denied.

Entered by direction of the court at Anchorage, Alaska
on May 4, 1989.

/s/ David A. Lampen
DAVID A. LAMPEN
Clerk of the Supreme Court

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

Case No. A91-171 Civil

CARL THOMPSON,
v. *Petitioner,*
JOSEPH CLASS, *et al.,*
Defendants.

**INITIAL REPORT AND RECOMMENDATION
RE: PETITION FOR HABEAS CORPUS**

Carl Thompson, presently serving a life sentence for
first degree murder following a conviction in an Alaska
state court, has filed a habeas corpus petition under 28
U.S.C. § 2254 in which he claims his Constitutional rights
to due process and against self-incrimination were violated
when his involuntary confession was admitted at trial
during the prosecution's case-in-chief. This Court, having
reviewed the petition, the memorandum in support thereof,
and exhibits attached thereto, including a transcript of
petitioner's statements to the police, the state's response
thereto and petitioner's reply, and having heard argument
thereon, now makes its Report and Recommendation.

FINDINGS OF FACT

1. In 1987, in the Alaska Superior Court in Fair-
banks, Alaska, petitioner was convicted by a jury on one
count of first-degree murder and one count of tampering
with physical evidence. He was subsequently sentenced
to ninety-nine years on the first-degree murder conviction
and an additional five years on the tampering charge to
be served consecutively. The Alaska Court of Appeals
affirmed the convictions, found the consecutive five year

sentence for tampering to be excessive and remanded for resentencing. On remand, the trial court resentenced petitioner to a term of 99 years.

2. Petitioner moved to suppress the tape recorded confession he made to two Alaska State Troopers before trial on the grounds that the interrogation violated his fifth amendment *Miranda* rights; and that his resulting confession was involuntary. The motion was denied. At trial, during the prosecution's case-in-chief, a portion of the tape recorded confession in which he admitted stabbing his ex-wife was played to the jury.

3. Petitioner has exhausted his available state court remedies.

4. On September 10, 1986, the body of a woman was found floating in a lake off the Elliott Highway by two moose hunters. The woman had been severely beaten and stabbed a total of twenty-nine times. She was clad only in a T shirt and wrapped in chains, a bedspread and tent fly. There was a heart-shaped tatoo with the name "Carl" over her left chest. After the Alaska State Troopers advertised for information concerning the identity of the body, Carl Thompson telephoned the troopers and reported that the description fit his former wife who had been missing since that August. A subsequent dental examination conclusively identified the body as Thompson's former wife, Dixie.

5. On September 15, 1986, after questioning Thompson's brother-in-law and another witness, the Alaska State Troopers' investigation focused on Thompson as the most likely person to have killed Dixie Thompson.

6. Intending to question Thompson about the murder, Trooper Stockard contacted him and asked him to come in to the trooper headquarters on the pretext of identifying a coat, some jewelry boxes and jewelry that might have belonged to his former wife. Once Thompson arrived at the office, Stockard and another trooper interrogated Thompson for approximately one hour and 16 min-

utes. During the questioning, Stockard repeatedly informed Thompson that he was not under arrest, that he was free to leave at any time, and that he would be able to leave when the questioning ended.

7. During the interrogation, the troopers told Thompson that they believed he had killed his former wife and urged him to help them get at the truth. Stockard told Thompson to tell his side of the story so that they could present that version to the District Attorney. Otherwise, he warned Thompson that the prosecutor might conclude that killing of Dixie Thompson was first-degree murder. Stockard suggested that if Thompson explained his part in the slaying, it was possible that he might only be guilty of a lesser charge such as manslaughter or negligent homicide; and would be facing a minimal sentence such as two to five years, as opposed to a ninety-nine year sentence for first-degree murder.

8. After several lengthy statements by the troopers in which they informed Thompson that they didn't think the killing was first-degree murder, and guaranteed him that they weren't going to arrest him in the office and that he would be permitted to leave, Thompson abandoned his original story and admitted killing his ex-wife. In so doing, he asserted that he initially stabbed her in self defense and then lost control and continued to stab her in the heat of passion.

9. Once the interrogation was concluded, Thompson was permitted to leave the trooper headquarters, as promised. He was arrested approximately two hours later and charged with first degree murder.

10. At no time during the interrogation did the troopers advise Johnson of his *Miranda* rights.

DISCUSSION

This petition raises two questions. First, was Thompson's confession obtained in violation of his 5th Amendment right against self-incrimination? Second, were his

statements involuntary? For the reasons given herein, the answer to both questions should be in the negative.

Thompson was neither in custody nor deprived of his rights in any significant way during the interrogation. He was repeatedly told that he was not under arrest and that he could leave anytime. Trooper Stockard even guaranteed that he would be free to leave at the end of the questioning. In fact, when the questioning was finished and he had admitted killing his wife, he was allowed to go.

The trial judge found that Thompson was not in custody for *Miranda* purposes. The Alaska Court of Appeals affirmed his decision. (*Thompson v. State*, 768 P.2d at 130-31). This finding is presumptively correct. See 28 U.S.C. § 2254(d).

The United States Supreme Court has held that a person who is a suspect is not in custody for *Miranda* purposes unless there has been some actual indication of custody that would make a reasonable, innocent person feel that he was not free to break off the questioning and leave. See *Minnesota v. Murphy*, 465 U.S. 420, 431, 104 S.Ct. 1136, 1144, 79 L.Ed.2d 409 (1984); *California v. Beheler*, 463 U.S. 1121, 1124, 103 S.Ct. 3517, 3519-20, 77 L.Ed.2d 1275 (1983). The Supreme Court has adopted an objective, "reasonable man" test for deciding whether a person is in custody or otherwise subject to restraints comparable to those associated with formal arrest. See *Berkemer v. McCarty*, 468 U.S. 420, 441, 442, 104 S.Ct. 3138, 3150, 3151, 82 L.Ed.2d 317 (1984).

In determining whether someone is in custody, the trial court must consider the totality of the circumstances and then decide whether a reasonable person would have believed that he or she was not free to leave. *United States v. Pinion*, 800 F.2d 976, 978-79 (9th Cir. 1986), cert. denied, 480 U.S. 936, 107 S.Ct. 1580, 94 L.Ed.2d 770 (1987). Relevant factors to be considered are: (1)

the language used by the officer to summon the individual; (2) the extent to which the individual is confronted with evidence of his guilt; (3) the physical surroundings of the interview; (4) its duration; and, (5) the degree of pressure applied to detain the individual. *United States v. Wauneka*, 770 F.2d 1434, 1438 (9th Cir. 1985).

Here, there is no indication language was used by trooper Stockard that would imply to Thompson that he should expect to be arrested when he came into the office. During the interrogation, he was confronted with some evidence implying his involvement in his ex-wife's killing (e.g. tire tracks at the scene where the body was found similar if not identical to the tire patterns on his vehicle), although this information did not appear to be sufficient by itself to encourage him to change his story.

The interview took place On September 15, 1986 in the troopers' offices. It began at 10:58 a.m. and ended at 12:14 p.m. Thompson was not physically restrained in any way. Both troopers were dressed in plain clothes. There is no indication that he would have been prevented from leaving if he chose to do so. His vehicle keys were not taken from him until after he confessed, and he was told that his truck was going to be impounded. He was repeatedly told that he was free to leave. He was permitted to leave following the interrogation. The location, by itself, does not indicate Thompson was in custody and required *Miranda* warnings. *Oregon v. Mathiason*, 429 U.S. 492, 495, 97 S.Ct. 711, 714, 50 L.Ed.2d 714 (1977). Neither does the hour and sixteen minutes involved in the questioning.

Thompson spoke freely with the troopers concerning his relationship with his former wife. He initially offered them a scenario in which he appeared to be innocent of his ex-wife's death. The troopers had focused on him as the principal suspect in her killing, although this, by itself, is insufficient to require *Miranda* warnings. *Minnesota v. Murphy*, 465 U.S. 420, 431, 104 S.Ct. 1136, 1144, 79

L.Ed.2d 409 (1984). They obviously wanted him to implicate himself; and, employed classic interrogation techniques in their successful attempt to secure a confession. Nevertheless, they consistently reminded Thompson that he was free to leave at any time he wanted.

Both the trial judge and the state appellate court carefully considered the totality of circumstances surrounding this issue. They applied an objective, reasonable person test, finding that Thompson was not in custody at the time of his interrogation and, therefore, the troopers were not required to give him his *Miranda* warnings. The record amply supports this finding.

Thompson alleges that his confession was coerced by the troopers' promise to bring his version of the facts to the attention of the district attorney, and their statements implying to him that they believed he might be charged with negligent homicide or manslaughter, rather than first degree murder, if they did. This argument fails because the troopers never directly or indirectly promised that they would do more than bring his story to the prosecutor and search for any facts that would corroborate it. They did not have the charging authority, and they never implied otherwise. Their statements, by themselves, are not sufficient to render Thompson's statements involuntary: "The promise must be sufficiently compelling to overbear the suspect's will in light of all attendant circumstances." *United States v. Leon Guerrero*, 847 F.2d 1363 at 1366 (9th Cir. 1988). The Alaska Court of Appeals, after a careful review of all of the circumstances surrounding the confession, found that the troopers' statements were not the kind of inducements that were likely to overcome his will and bring about a confession that was not voluntary. *Thompson v. State*, 768 P.2d at 131-32. The record supports this finding.

RECOMMENDATION

Based upon the foregoing, it is hereby recommended that this petition be DENIED.

DATED this 29th of December, 1992.

/s/ Harry Branson
HARRY BRANSON
U.S. Magistrate Judge

MINUTES OF THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

Case No. A91-171 CIV.

CARL THOMPSON

v.

JOSEPH CLASS, *et al.*

THE HONORABLE HARRY BRANSON, U.S. Magistrate
Deputy Clerk/Recorder: Ellaine Wheeler

MINUTE ORDER FROM CHAMBERS

This Court has reviewed petitioner's objections to its Initial Report and Recommendation [Docket No. 24]. It has also reviewed the transcript of petitioner's interrogation on September 15, 1985. The Court acknowledges that as a result of a typing error, the name "Johnson" instead of "Thompson" was inserted in Paragraph 10 of the Findings of Fact and would amend this paragraph accordingly. This Court declines to modify the Initial Report and Recommendation further. This matter is now ready to be forwarded to the trial judge for determination.

Deputy Clerk's Initials: *emw*

DATE: September 28, 1993

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

Case No. A91-171-CIVIL

CARL THOMPSON,
Petitioner,

v.

JOSEPH CLASS, *et al.*,
Defendants.

ORDER

Petitioner, who was convicted of first degree murder and tampering with physical evidence, seeks a writ of habeas corpus challenging his conviction. Petitioner raises two issues: that certain incriminating statements were obtained in violation of his *Miranda* rights; and that the statements were involuntary. Parties dispute whether the petitioner was actually in custody when he made the statements. Petitioner has exhausted his state remedies as to these issues. Petitioner is represented by counsel, who has briefed and argued the matter before Magistrate Judge Branson. Magistrate Judge Branson has made findings of facts, conclusions of law, and recommends that the petition be denied. Neither party objected to Magistrate Judge Branson's recommendations. After a thorough and independent review of the record, I agree with Magistrate Judge Branson's finding of facts, conclusions of law, and recommendation. *See United States v. Remsing*, 874 F.2d 614 (9th Cir. 1989).

IT IS THEREFORE ORDERED THAT:

For the reasons stated in the report and recommendation, this petition is DISMISSED.

DATED the 18th day of February, 1992, at Anchorage, Alaska.

/s/ John W. Sedwick
JOHN W. SEDWICK
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

Case No. A91-171-CIV (JWS)

CARL THOMPSON,
Petitioner,

v.

JOSEPH CLASS, *et al.,*
Defendants.

ORDER FROM CHAMBERS

BACKGROUND

On December 29, 1992, Magistrate Judge Branson recommended that Carl Thompson's petition for a writ of *habeas corpus* be denied. Thereafter, following an independent review, this court concluded that the recommendation was correct and denied the petition on February 18, 1993. Petitioner then filed a motion to vacate judgment and to allow a new ten-day period in order to file objections to Magistrate Judge Branson's report and recommendation. This court granted the motion on July 19, 1993. Petitioner then filed timely objections. Following a review of the those objections, Magistrate Judge Branson certified his initial report and recommendation as final.¹ The matter is now referred back to this court for consideration.

¹ Magistrate Judge Branson's only revision involved a typing error. In the initial report and recommendation, petitioner Thompson was referred to in one instance as "Johnson."

Petitioner Carl Thompson was convicted of first degree murder and tampering with physical evidence. He raises two issues in his petition: that certain incriminating statements were obtained in violation of his *Miranda* rights; and that the statements were involuntary. Petitioner argues that he was actually in custody when he made the statements. Petitioner has exhausted his state remedies as to these issues.

In his initial and final report and recommendation, Magistrate Judge Branson has made findings of facts, conclusions of law, and recommends that the petition be denied. After a thorough and independent review of the record, with two exceptions to the findings of fact, the court agrees with the Magistrate Judge's recommendation. See *United States v. Remsing*, 874 F.2d 614, 618 (9th Cir. 1989).

DISCUSSION

I. *Was Mr. Thompson In Custody For Miranda Purposes?*

Petitioner objects to the Magistrate Judge's finding of fact that Mr. Thompson's questioning lasted approximately one hour and sixteen minutes. The transcript of Mr. Thompson's questioning reveals that it lasted from 10:58 a.m. until 12:54 p.m. See Docket no. 1, Exhibit F. Therefore, as petitioner contends, the questioning lasted for at least one hour and fifty-six minutes.

Petitioner also objects to the Magistrate Judge's implicit finding of fact that Mr. Thompson's keys were only taken from him after he made his confession. In the evidence before the court, it cannot be conclusively determined when, precisely, Mr. Thompson's keys were taken from him. Nevertheless, the evidence shows that Mr. Thompson was repeatedly informed that he was free to leave at any time. See Docket no. 1, Exhibit F, at 27, 49-50, 81, 84-86. Moreover, the Alaska Court of Appeals also found that, at numerous times, Mr. Thompson told he was free to leave. See Docket no. 1, Exhibit A, at 8.

The fact that the questioning lasted almost two hours, rather than one and one-quarter hour, however, is insufficient, on its own, to reverse the state courts' determination that Mr. Thompson was not in custody for *Miranda* purposes. Federal courts considering *habeas corpus* petitions give deference to the state court's factual findings. 28 U.S.C. § 2254(d). The state court's factual determination that Thompson was not in custody is, thus, presumptively correct. See *Marshall v. Lonberger*, 459 U.S. 422, 431-32 (1983); see also *Dres. v. Campoy*, 784 F.2d 996, 998 (9th cir. 1986) (state court findings of fact are presumed correct in *habeas corpus* proceedings). Accordingly, this court agrees with the Magistrate Judge's recommendation that Mr. Thompson's petition should be denied.

IT IS THEREFORE ORDERED THAT:

For the reasons stated above, this petition (Docket no. 1) is DENIED.

DATED the 7th day of December, 1993, at Anchorage, Alaska.

/s/ John W. Sedwick
JOHN W. SEDWICK
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

Case Number: A91-171CIV (JWS)

CARL THOMPSON

v.

JOSEPH CLASS, *et al.*

JUDGMENT IN A CIVIL CASE

- ☐ Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.
- ☒ Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

THAT the petitioner's, Carl Thompson, petition for Writ of Habeas Corpus is DENIED.

APPROVED:

/s/ John W. Sedwick
U.S. District Court Judge

Date 8 December '93

/s/ [Illegible]
Clerk
12/9/93

/s/ [Illegible]
(By) Deputy Clerk

MINUTES OF THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

Case No. A91-171 CV (JWS)

CARL THOMPSON

v.

JOSEPH CLASS, *et al.*

THE HONORABLE JOHN W. SEDWICK
Deputy Clerk Pam Richter

ORDER FROM CHAMBERS

Petitioner's motion for a certificate of probable cause is hereby GRANTED.

[Filed Jan. 11, 1994]

DATE: January 11, 1994

INITIALS: *pr*
Deputy Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

C.A. No. 94-35052
D.C. No. CV-91-00171-JWS

CARL THOMPSON,
Petitioner-Appellant,

v.

PATRICK KEOHANE, Warden; CHARLES E. COLE,
Attorney General, State of Alaska,
Respondent-Appellee.

Appeal from the United States District Court
for the District of Alaska

John W. Sedwick, District Judge, Presiding

Argued and Submitted August 5, 1994
Anchorage, Alaska

BEFORE: PREGERSON, CANBY and BOOCH-
EVER, Circuit Judges

MEMORANDUM *

Carl Thompson appeals the district court's denial of his petition for writ of habeas corpus. Thompson alleges

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Cir. R. 36-3.

that his incarceration violates the Constitution because the state trial court admitted statements that Thompson argues were obtained in violation of his *Miranda* rights and a confession that he argues was involuntary. We affirm.

I.

We recently have held that a state court's determination that a defendant was not in custody for purposes of *Miranda* is a question of fact entitled to the presumption of correctness under 28 U.S.C. § 2254(d). *Krantz v. Briggs*, 983 F.2d 961, 961-64 (9th Cir. 1993). Thompson has not shown, and it does not otherwise appear, that any of the exceptions to the presumption, *see* 28 U.S.C. § 2254(d)(1)-(8) (1988), apply in this case. Accordingly, we may only disturb the state court's factual determination if it lacks even fair support in the record. *Krantz* at 964.¹

We have reviewed the entire transcript of Thompson's interrogation. Thompson voluntarily appeared at the trooper headquarters. During the interrogation, the troopers assured him several times that he was free to terminate the interview and leave. Indeed, even after he confessed, Thompson was permitted to leave when the interview was complete. "Fair support" exists for the state court's determination that Thompson was not in custody for *Miranda* purposes. *See id.* at 963 (test for determining custody is whether, based upon a review of all the pertinent facts, a reasonable innocent person in such circumstances would conclude that they were not free to leave).

¹ This standard requires that we "more than simply disagree with the state court." *Krantz*, 983 F.2d at 964. Accordingly, Thompson's attempts to analogize the circumstances of his interrogation to the circumstances of cases in which this court has held that a federal defendant was in custody for purposes of *Miranda* are unavailing.

II.

We review *de novo* the question whether, considering the totality of the circumstances, Thompson's will was overborne through psychological pressure rendering his confession involuntary. See *Miller v. Fenton*, 474 U.S. 104, 110 (1985). We have independently evaluated the transcript of Thompson's interrogation and concluded that, the cumulative effect of those tactics did not overbear Thompson's will.

AFFIRMED.

EXCERPTS OF TRANSCRIPT OF
SEPTEMBER 15, 1986—

STATEMENT OF CARL THOMPSON

PROCEEDINGS

[1] SGT. STOCKTON: The time is time 10:58 a.m. and the date is September 15, 1985 (sic). This is Sergeant Stockard. Carl Thompson has just arrived at AST headquarters and Trooper Hard has gone to the front counter to bring him back to the investigations area. Trooper Hard and Sgt. Stockard will be conducting this interview.

(Long pause—awaiting witness)

(Indiscernible voices off in a distance)

SGT. STOCKARD. (Indiscernible—ongoing conversation as they enter the room). I just don't know what to—what to think here. Let's see this.

MR. HARD: Why don't you sit over here for a minute. Got—got two (indiscernible) here. These, kind of gone over some of this stuff of her. Here, you take a look at that.

MR. THOMPSON: Yeah, the three jewelry boxes all right.

MR. STOCKARD: Is that your—how about this stuff now this stuff now, this is interesting. Okay. How about this, this stuff? (From this point on, A will be Mr. Thompson, Q will be Sgt. Stockton and Q2 Hard when able to distinguish)

A Yeah, sure is.

Q Okay. This—these earrings?

A (indiscernible—interrupted).

Q These I thought they were kind of unusual rings.

A Uh-huh.

* * * *

[4] Q Okay. Okay. Because I don't see anything, real—but it's about the same (indiscernible) as hers?

A Yeah, exactly. It looks like it.

Q When—when would she have gotten that, if you remember?

A I think her mom use to loan it to her, if I remember about a year, oh back last winter sometime.

Q Oh okay. So (indiscernible) her mom (indiscernible—opening packages).

A Yeah.

Q Okay. And how about the jewelry box, when did she get that? You say her mom gave that. . . .

A My mom gave that to her about. . . .

Q Oh your mom.

A I think last Christmas or the Christmas before. I can't remember.

* * * *

[27] Q Uh-huh.

A But I can't remember what kind of shirt she had on.

Q Yeah.

A Hard to say.

Q Okay.

A But she always wore jeans, about all, you know, the only thing. She never wore no slacks or anything like that.

Q Nothing real fancy?

A No.

Q Well, they (indiscernible) you don't have to be fancy to be a good woman, huh?

A No.

Q That beauty is only—only skin deep, it's what's under that counts.

A Right.

Q Do you know—of course, I don't mean to take up a lot of your time, you—you can leave any time that you want to, if you've got something else going on.

A Oh no (indiscernible) around here, no.

Q I know we called you and probably woke you up and. . . .

A No, I was just laying there.

[28] Q Okay. But you know, you can go any time you want to. We got a—you know, we're trying to—trying to crack on this thing, and I—I don't imagine it's any secret to you that there are some of your—your friends or associates who have been kind of calling up and saying, you know, they've been pointing at you. . . .

A Yeah, that (indiscernible) guy you know and we've been friends for ten years, you know, and this guy is starting to say stuff that I never even said. First off he's got. . . .

Q What kind—what kind of stuff is he saying?

A Oh that I told him that I just came home and she was gone.

Q Uh-huh.

A That was the time before, you know. I mean it's obvious I didn't. . . .

Q Okay.

A come home and she was gone. I mean everybody knows that for Christ sake. God, you know, stuff like that, and he swears up and down I said that. And I said, hey you're crazy, Man. I never said that:

Q Yeah.

A Don't have any reason to say that, for Cripes' sake.

* * * *

[38] Q All right. Well I'll tell you, you know the biggest problem we've got right now to get by is I have to tell you, you guys did a pretty good job out there, and it—it's real obvious exactly what happened, how somebody backed up with tire tracks (indiscernible) and stuff like that. And the wheel—we've got one real good tire cast. I mean there's a couple you kind of figure (indiscernible), but one is a real good one. And I've got to tell you that that tire cast matches the truck—the style tire on your car just right to a T.

A Right.

Q And that—that gives me a real problem here.

A Uh-huh.

Q It gives us a lot of problem. Because I—I've got to tell you I haven't been entirely honest with you. I mean I've been pretty—pretty up front here. If I—I've held some things back from you.

A Uh-huh.

Q And I'm real concerned about this tire track out there. Now how we're gonna explain that? Was it just coincidence that somebody else has the identical tire, which of course the lab will be able to tell if they look at all the little cuts and scrapes and differential wear, all that kind of stuff.

A Uh-huh.

[39] Q They'll be able to do that for us.

A Uh-huh.

Q But I have—I have—I have some problems with this. And I think that maybe (indiscernible) have to be honest, is where at the point where we're not really dealing with the—the how of the thing, we're not really dealing with the who, probably not really with the when or the where; what we're really dealing with is the why. And I think that what we're going to find here is that the big question of why is that it's not—it's to determine whether or not we're dealing with a cold calculating murderer who sat back, planned this thing for days or weeks and finally, let's do it or—or somebody that happened—got out of hand, you know, that—that this foolish bitch brought on herself really. I mean that—you know that she just—just picking and poking and if it's one of the things that just happened (snapping fingers) like that instantly and it's over before it starts and—and here's—she's got you into real trouble this time. I mean not just the usual bullshit trouble she's getting it. . . .

A Uh-huh.

Q then that's a whole different complexion on—on the other things.

A All right. I know.

Q And you know. . . .

[40] A That wasn't me, there's no way.

Q frankly I think that there's still some question and I—I think that you did do this thing.

A You really do, huh?

Q I think that right now it's still looking that way. I wish I could find a way to prove that that wasn't so. But I—I'm sure in my own heart right here. I'll tell you why. It's because it's like I—like I told you told. I haven't told you everything. It's like we're playing poker. Are you a good poker player?

A I play yeah.

Q Play a little? Do you win a lot of money?

A Not usually, no.

Q No, huh. Well I'll tell you it's like we're playing poker, you know, and I'm holding a hand here and you're holding a hand here. And I—I've shown you a couple of my cards, but I haven't shown them all to you.

A Uh-huh.

Q And—and right now what you're betting on is you're betting that whatever you're holding there is more than what I'm holding. Now I can assure you that. . . .

A Well I don't look at it like that.

Q Yeah. Between Sam and—and myself and Jim and the first sergeant and all of us here, we've probably got over a 100 years of experience at working on this sort of thing. And [41] we'll get to all the facts and we've already got a tremendous number of them right now.

A Uh-huh.

Q And you know what I'm really—waht I'm getting at here is I'm—I'm giving you now the opportunity to make the best of a bad situation. And I think that she—she brought the situation on, that she got you into what got to be the biggest trouble she's ever gotten you

in before. I mean she got you in trouble before there, when she—she made you lose her temper over taking that money and she—and you punched her around a little bit and then she goes to the troopers later and she's gotten you in trouble other times. I mean I know that the other times when you've done things—I mean you had this thing at Chena Hot Springs.

A Uh-huh.

Q And I've talked to Mike and I've talked to the other people and I've read the report, and it looks to me like every time you punch somebody out, that you do that that you've got a good reason for it. I mean if—am I—am I right? That guy out hot springs is an asshole. I know that. I've been out there myself.

A Yeah. No I. . . .

Q He probably just told you to piss off—piss (indiscernible) up the road, or something, didn't he?

A (Indiscernible) to clean up.

[42] Q1 Yeah and he deserved what he got. Well I—you know what my present attitude he say—he says that Carl has got to be an easy-going guy who doesn't get—doesn't get really upset at things until somebody does something and they deserve it. And then—then you do it. And that's what you said. You said that guy at Chena Hot Springs, if Carl punched him, he'd have had to deserve it. He's have had to—had to do it.

Q2 Well. . . .

A Yeah I mean. . . .

Q And I think that's true. I mean you were talking about what happened to Dixie that time before. I mean she stole \$7,000. If that isn't a reason. Somebody deserves to get at least the message brought home I don't know what is.

A Yeah.

Q I mean I'm not gonna leave anybody steal \$7,000 from me and get away with it.

A Yeah.

* * * *

[45] Q who are going to say and think that. Well they're gonna continue to say and think that unless that we can show that that's not what—what really happened. And I'm willing to work with you on this thing to make the best of a bad situation. I can't tell you that this isn't a bad situation. I mean you're free to get up and walk out of here now and—and never talk to me again. But what I'm telling you now is this is probably the last chance we'll have to—for you to say something that other people are gonna believe because let's just—let's just say that there's enough (indiscernible) here already that we can—we can prove conclusively beyond a reasonable doubt that—that you were responsible for this thing—this thing. Well really there's a lot that she's responsible for, but you're the guy that's stuck with the problem. And you get stuck with the mess to clean up, you know. You know, say we can prove that, if we come down you know, six—a month, two months, [46] six months later and now you've come forward and you're trying to tell a sotry, people are gonna say, ah this guy has had time to think of something. This guy is putting this story together. He's making it up now because he knows what the police. . . .

A I've already told you the story.

Q And—and he's making it up. Well you haven't told me the critical part and you haven't told me the part about where Dixie gets killed.

A And I don't know about that. That's your guys' job. You're supposed to know that.

Q Well like I told you, we know the who, the where, the when, the how. The thing we don't know is the why. And that's—that's the thing we've got to kind of get straight here today between you and I. See I know that you did this thing. There's—there's no question in my mind about that. I can see it. I can see it when I'm looking at you. And I know that you care about Dixie. I mean this isn't something that you wanted to happen. You never would have—I mean if you'd wanted for this

to happen to Dixie, would you have let her come back into your life? Would you have gone to Anchorage and got her? Would you—you gone on—you wouldn't. That would have been nonsense. But I know that. . . .

A You're (indiscernible).

[47] Q that sometimes things happen.

A Well. . . .

Q Sometimes, you know, people get pushed and—and things happen. I don't know—you know, I can't—I can only speculate, you know. I can see the results of what happened. I can see the physical things, right? I can see the physical evidence, I can see what led up to it. Like I say, I got those—the who, the when, the why—or the who, the where, the how, the what, those things. Those are just physical. But they don't get to the heart of the matter, and that's the why. I mean there are times when things get. . . .

A (Indiscernible) don't even know why that—well why don't you arrest me if I did it?

Q I don't want to arrest you. I'm not gonna arrest you today. I think—I told you a dozen times. You're free to walk out of here any time, and you can. But what I'm telling you is that—that I think that now it's the time for you to come honest about this thing, because if you turn around later and try to. . . .

A I am being honest about it.

Q No, you haven't. You told part of the truth and you told a lot of it, but you haven't told all of it. And—and that's the problem. I mean your—you're not probably lying directly to me, but you're lying by omission (indiscernible) [48] on those things. Now like I told you we don't—I haven't told you everything and—and I'm not going to. And even—no matter what you think it's not everything. I can tell you that right now there's a search warrant being served out at the place, 15.1 mile and a search warrant for your truck is gonna be served and we've got a forensic expert up from—from Anchorage and they'll have techniques which you prob-

ably aren't familiar with, and I'm not an expert—that's why we got them here—called—a thing called *luminal* (ph) and it's a way that you can pick up microscopic traces of blood ever after it's been washed and cleaned-away. I mean it's an amazing thing, you know, they spray the stuff around, they turn on the black lights and all—all the little droplets of blood and everything light up.

A Huh.

Q And they're doing that stuff right now. And I—and I have no doubt in my—in my heart that's what they're gonna find out there, because I've looked through other things, and—and I've looked at you. And I don't believe that you're a bad person. I really don't. I don't believe that you're—you've got an evil cold-hearted (indiscernible) criminal who decided to do these things. I believe *genuinely* (ph) I mean right here, that what—that what happened here was never planned, what happened here was one of these things that just happen. I mean things happened bad, things happen to [49] even good people. And when it happened you're stuck with this—I mean you're stuck with a hell of a mess now. She's got—she's finally got you into more trouble than she can possibly imagine. I mean she's brought this thing on you. She causes that. She's the one—I mean you're happy. You're out drinking, having a good time. You come back and she's pissed and moaning and saying well I'm gonna pack my shit out and on and on. I don't know what exactly what happened out there. I mean I don't know whether she started the thing by grabbing the knife and saying she was gonna (indiscernible) at you and it got turned around or just what happened. I mean I don't know those things. All—there's only two people who know these things. That's her and that's you. And of course she can't tell us. She can tell us a lot of things, from what's left. I mean she tells us things. She can't—can't tell us the why, but she can tell us all those how and the whens and all those things. And—and that's

what's critical, because we've got those things. And we're getting more of them every moment. And I have no doubt and I know that you know in your heart that all those things are gonna come out because the truth does come out in the end,

A Uh-huh.

Q almost all of it.

Q2 Uh-huh.

Q Now we're at the point right now where two things can [50] happen. Obviously you can just walk right out of here, like you're gonna do. I mean you're gonna walk right out of here today no matter what. No matter what you tell me you'll walk out of here. Okay? I mean there's no question in my mind on that. And I hope there's no question in yours. Is there?

A No.

Q Okay. But the question here is are you gonna end up labelled and stuck with that label that people are gonna want to put on you, that hard-core, that bad image, or—or are you gonna take the time and the courage—because that's what it takes, to come forward and explain why this thing really happened, because I suspect that this thing is not the way some people are gonna say. I mean some people are—Dave is gonna say, yeah, he went out there and he just said he'd had enough and stab her. Period. I mean he probably stuck it in her back. I mean who knows what he's gonna say. He's gonna say—you know he's gonna say that. I mean people are going to say that. No way that people are gonna believe that. Maybe so, but you know, there are people who are gonna believe that stuff. Well you have a—a unique opportunity here and that opportunity is to help us to get at the real truth, not the speculative well maybe this is what happened. We know the physical: this is where it happened and who— [51] who it happened with and that sort of thing, but the why it happened. The exact—I mean because that's what makes a big difference. I mean obviously you know that you're

in trouble right now. There's no question about that, right?

A I'm not in any trouble. I didn't do anything.

Q Well but you did—you killed Dixie. I mean that's—that's what you're in trouble over and you know that. There's no question about that. Now I—I. . . .

A If I killed her how come you never arrested me?

Q Because we don't. . . .

Q2 We don't think you're a cold-blooded killer.

A I want to know why.

Q We don't think—if you were a cold-blooded killer, a contract killer and somebody who plots these things out, well then we'd have to move fast, wouldn't we, because you might do it again. I mean you could do it any time, right? I mean that makes sense, right? If you were a you were a professional killer, somebody who went totally "AWOL," who didn't care about anything. Well we don't think that's the case. I certainly don't. I think what you are is just somebody—an ordinary guy who made a simple mistake, not because you wanted to, but because you were forced in it, you were backed in that corner and the thing just happened and you're stuck with the results. Like somebody who runs through a red light, runs [52] into your car; you're stuck with the result of what's somebody else does. Well I think that's what happened. And because of that yeah, I mean if that's true, you're not gonna go out and kill somebody else. I mean there's no danger to anybody else, so why should I arrest you? I mean I should give you—it's what we're here for right now—the opportunity to explain—to put your best face forward, put your best foot forward, to explain exactly what happened, rather than later on having to get back there and trying to you know, shuffle and try to make things make sense and saying no, no, no. Wait you misunderstood that. That's not exactly the way it happened; this is what happened. I mean I don't want you to get in a point of trying to explain things when other people have already made up their

mind. I'm giving you the opportunity to help us to come to the real truth of this thing. Because I—I know that you did this thing. You know, there's—there's other evidence which like I say I haven't told you about. You know, we've got things, we've got—got the knife that came from the same place as the rest of the stuff. And it's been sent off to Anchorage to the forensic people and they're gonna do blood analysis, finger printing, *laser* (ph), the latest stuff, all the stuff that they do. And I don't know if your—if your fingerprints are gonna be on that knife. I don't know that. Is—is traces of your blood gonna be on [53] there mixed with hers? I don't know those things. But I do know is that all these things, all these (indiscernible) all these little teeny bit pieces of the puzzle are come—you know, are coming together. And all those out, they're all pointing at you. And all the bits of the puzzle are fitting in the grand picture here. Now there's only one part of that picture which only you can supply is the part that says why, intentions. What was in that (indiscernible)? I mean if you set out, intended to kill and you aren't sorry about it and you don't give a damn, then fine. I mean I wash my hands of you. I don't care what they do to you, because I mean that's probably what you deserve, right. I don't think that you're that kind of person. I think that there's—there's good in you, that there's—that there's something bad that happened to you. But that—that you didn't set out and intend for this to happen. You didn't intend for Dixie to die. You didn't even intend to hurt her. It's just like the other times she did things that were so outrageous—and I don't know what that outrageous thing was, but it was worse than stealing \$7,000. It was worse than all the other things she'd ever done together and it was so bad and for all that you just did—in a blink of an eye something happened. And I don't think whether she started it and it just happened to get finished the way it did, that you finished what she started or what happened. I mean I— [54] I don't know those things.

A Uh-huh.

Q Because those are the why. That's—that's what's here.

A Does that make any difference?

Q That's the human element. Sure as hell does.

Q2 Sure.

Q Think—think of the difference here, what—we have a just system which has a problem. We've got little cubbyholes where people—when people who are human and who are different and unique, and have to fit in. And what they do when somebody does something we have to take their act, what they were thinking and what they did and fit it into one of these cubbyholes. Now one of those cubbyholes, of course, is first degree murder, right? That's—that's an unclassified felony, deserve a 99 years, presumptive sentence of 20 years, all that kind of stuff. Well then there's another cubbyhole that's called second degree murder, And that's—I don't remember. It's like an A felony and it's 20 years or—or—maybe that's nin—up to 99 but presumptive is 5, I think that's what it is. Then there's—there's negligent homicide, there's manslaughter. There's all these little cubbyholes, right? Well I'd be the first to admit that trying to fit human actions and human things that happen into cubbyholes isn't always easy. You know, because there's—there's an infinite range [55] of what people do and what happens, but there's only a finite range of cubbyholes to fit people in. But that's what—that's where we are and that's where the DA and the grand jury is going to be on this thing to try and pick the right cubbyhole. And I'll—I—I'll—I have to feel that whatever happened to Dixie, if she's partially responsible for it, you shouldn't take all of the blame for it. Right? I mean that makes sense, right? I have to believe that if you're partially responsible for it, you should take some. You know, we all have responsibilities as adult human beings. We have a responsibility to take our licks when they're coming to us, right, even if they're aren't fun. Would you agree with that? I mean when you

do something wrong, to everything we do there's a cost associated with it.

A Yeah, if I did something wrong, sure.

Q That's right. And that's—that's what we're looking at here. We're looking at making sure that you don't get more than you deserve here. I mean I—if you didn't commit a first-degree murder, if you didn't set up and preplan this thing, why should you be charged with that, why should you go to jail for that? If you didn't commit a second-degree murder, I don't want you to be charged for that. If all that happened here is a manslaughter or a negligent homicide, something which—which where [56] she starts it and she's coming at you and you defend yourself or whatever it is, I don't know. I—I don't know that. That's the thing I don't know. Then I want to see that justice is done here, that—that are you subject to an injustice. Now there are going to be those people—there are going to be the DAs and all those people who are going to look at—they're going to look at the old—the other case, the allegations she's made, and they'll look at the man at Chena Hot Springs—they're gonna look at, you know, other times when you had fights or been (indiscernible) This guy is a bad guy, God. I mean that's gonna be their—their first idea, gosh, think gosh, what a terrible guy. Right? Well I—I've looked at those and I've looked at it carefully you know I have because—because I—I can tell you things about it. . . .

A Uh-huh.

Q each one of those times there was a reason that you did what you did. You didn't do these things just out of space. I mean you didn't just suddenly decide something for no reason or you're not crazy. You're not a psychopath or something like that. You're just an ordinary guy who when he gets pushed, when he gets backed into a corner, when he's subject to an injustice, when somebody does something to you which they shouldn't have done, that you react. I mean it just hap—

it [57] just so happens that the way sometimes you react is by hitting somebody or by pushing them or by slapping them around. And that's not necessarily bad. I mean obviously some people need that. And I'm not worried about those things. I mean I—I don't—I don't care. Those things aren't important, because right now what we've done is she's got you in a hell of a bind. I mean she brought this thing on, she left you there, stuck with this body and the problem of how—how—how the hell do I—how to explain this. I mean what do you do? You've got to sit there and say well gosh, you know, I got this body here. If I just—if I just call the cops and say—and try to explain this nobody is going to believe me. They're gonna say, ah bullshit. You know, we've got your past record. We've got the complaints you made in the past, you must've just decided that you had enough of this and killed her. I mean you got to be thinking that when you're sitting there with her lying there. So you did the thing which you felt you had to do. And that was just to get rid of it and just wash your hands, just forget. She brought this thing on. It's her fault. Why should you be forced to live with that. I mean forced to live with what happened. I mean I know that you can never forget that night, no matter what happened that night. That night is burned into your mind. But what I want to do is I want to give you a chance to—[58] to show that you're sorry. I mean I assume that you're sorry that Dixie's dead.

A Yeah.

Q Yeah. She was your wife, you loved her and even after she wasn't your wife, even after she filed divorce papers and all that stuff and gone all the way through with it, she—you were still letting her come back with you because you love her that much. You can tell that she's the one—she's the one who's flying off here, flying off there, just taking off, just taking off not telling you when she's gonna come. And yet you loved her so much that every time you let her come back. And that's where

—that's where we're at. You know, we're at that place where it's time to be really honest about this thing, because I think, I believe here that just in this case, just as in all of those times that whatever happened, the exact details of what happened, you had a reason for. I mean you didn't—you just didn't do this thing just on the spur of the moment, you did do it because you had a reason, because it happened so fast that you weren't able to think through the whole result. I mean you weren't able to go through the whole thing you know, if I do X, Y and Z are gonna happen. I mean you just—it happened so fast—if that's what happened, then that's pro—that's not first degree murder. That's not—I mean are we talking about heat of passion here and are [59] we talking self-defense, these are the questions which are so important for us to get to now. Because later on and that's—right now is the first time anybody sat down and confronted you with things have said these are the things. So if tell us the truth now, the chances are people are much more likely to believe them to be the truth, because they're not gonna say ah, here's the guy who's heard the evidence and now he went away, he thought about it for a few weeks and then he came back and now he's got a story. Right? It's kind of a like if—it's called reasoned evidence, it's the best evidence.

A I don't know how you guys work or—you know what your angles are and anything, but it's not what happened.

Q Well only you and Dixie Can—can tell exactly what happened.

A You guys (indiscernible).

Q Dixie is *not* (ph) telling us. No you can. Because you're the guy who killed her. There's no question about that.

Q2 Carl, we don't. . . .

Q But you. . . .

Q2 We don't—we don't—we do'n—we don't bluff and we don't play little games. You've seen the stuff we

had. I mean I haven't shown you everything we have. I can't do that in the first place. But from what I've shown you, you can just imagine all the rest of the things. . . .

[60] A You don't think somebody could have set me up for this?

Q No. There's no way, Carl. That's just not the way it happened. We know our job and we do it well. Okay.

Q2 Carl, we don't believe you're a cold-blooded killer. We look at your past.

Q I know you're not.

Q2 You loved her. You spent five years of her life with her. But you were drinking that night, things weren't going well, she was mad at you, you got mad, maybe. I don't know. We're asking you to tell us because we don't have that answer.

Q And we don't have—I can't tell you we have every answer, because only you have that—really the human part of it, that part which I think really makes such a difference. Because if you were just a cold—cold-blooded absolutely * AWOL person who wouldn't care, who didn't love, couldn't love, who just used people and threw them away, well then—then you could be treated that way, right? I mean there's—then nobody would have any use for you. But I don't happen to believe that's the case, because I have—you know, I've looked at these—all the other things that you've been involved in and talked to your friends. If they said, Yeah Carl is just crazy. He goes in bars and punches people out for no reason. They didn't say that. Everybody said and all the stuff we have, says that every time that he [60] ever got into a problem that Dixie got you into a problem and really, she's the one who's causing most of these problems. She's there. You had a reason. And you had a reason which is understandable, which is explainable, which makes

* (or amoral)

sense. Now it may be hard for you to explain the reason why this thing happened. It can't be easy to talk about. I'm no fool. I mean I've been doing this long enough to know that—that this is the hardest thing you'll ever do, is to talk about really happened that night. And there's no question in my mind about that, Carl. The problem here right now is that only you right now can provide that human factor, those things that led up to it, things that you did which is so bad, so outrageous, so just beyond anything that you've ever done before that things got out of hand. And I don't—I don't think this went on for hours or days. I mean I know it didn't. This thing happened—I—just in the blink of an eye, just like the—the other—you know, the other things that happened, like the guy at Chena Hot Springs. You go to him with a disagreement and say hey listen, I got hair in my food, I've got a shitty room, I—I got these problems. What are you gonna do about it. And he says (indiscernable) and in that flash of an eye the thing is over. Well, I don't know, because you haven't told me and Dixie can't tell me. But I suspect that that's exactly what happened here, is that for some reason [61] she came up with something so outrageous, so unbelievable to you, so—so far out of your (indiscernable) so unfair to you, that just in a flash you reacted. And I don't know, you know, maybe—maybe you slapped her and—and she grabbed for a knife and—and you grabbed it way from her because she was trying to hurt you in self-defense. I don't know those things. So I can't—I wasn't there. And the two people who were there, only one of them is here to tell us. And that's you. And I—I'm asking you now to be honest about this thing, because right now is the best chance you have to be honest now is the time when people are gonna believe you. Because right now everybody is working on this case the task force is working on it and one of the first things we're gonna do if you're truthful with me, and you're honest and you tell me exactly what happened our

big push is not going to be now to prove that you were responsible for the death, it's going to prove that the circumstances were exactly as you described them. Now if you tell me, yeah this is the reason why this happened, this is the explanation why it happened, we're gonna shift our focus from merely trying to—to prove all those who, what, where and when things to proving those why things. Those things are hard to prove but we're willing to work with you on them, I'm willing to work with you, because I don't want to see a second injustice [62] committed. I don't want to see you unjustly and wrongly blamed for things you didn't do or have to pay for things that you didn't do. Okay, I can't tell you that you're that you're gonna—that you—today you're gonna walk out of here. But I can't tell you that this thing is all over when you walk out, you know it's not. You know that there are enough things now that are there that are working on you. We've got the tire, got the knife, we got the jewelry and the clothing, got all those things, we've been working at the airport. You know, we know the things that you've been doing, we've talked to witnesses who—you know your truck right. It's a neat truck I've seen it around town before, it recognizable. We'll remember that truck, beautiful, big, yellow thing, with great big tires on it, I mean it's a neat truck. People remember that. It stands out to 'em.

A Uh-huh.

Q Don't think we haven't been doing our work, because we have.

A I'm sure.

Q I—I want to be able to change the focus to proving Carl's goodness, to proving that the way that Carl says this thing happened is the way it really happened, not to just proving that Carl is responsible. I want to be able to get away from that. We can prove that. That's not going to be a big problem. You know that. I mean I haven't [63] shown you all the cards. I'm still hold—we're playing with seven cards at least. I've only shown

you about three of them. I've still got more in here. I'm not gonna show them to you and you know, you can bet against them if you want but you know how it is. The odds are always with the house and right now I'm dealing. The situation is we can—people can assume as the DA will want to—I mean I know Harry. I mean (indiscernible) Harry Davis in the paper. He's been our DA for years. Harry is gonna assume the worst. He's gonna assume hey, let's—let's get this guy. This guy is bad. Let's get him. Right? Well if he wants to do that, that's fine. I can't stop him unless I have other information to show him that that's not the way it happened. That yeah, you were there, you did do that but there was a reason for it, and a good reason, one that other people could understand, one that's explainable. And I'm sure there is. I mean I don't—like I told you I don't know why exactly is—I don't know what the words were. I don't know what the thing that she said was that was so bad that this thing went to—went to pieces. I don't know what that is. Only you know that. Now only you can—can help yourself at this point by coming forward with those things and explaining exactly what did happen. You know and I know that this is a—the hardest thing you'll ever do. There's no question about it. [64] I mean if you think it was hard getting rid of her and doing all that stuff and getting rid of her clothes and taking them out and throwing them away and stuff, that's nothing compared to the courage it takes to confront me and to talk to me. I mean there's no question about that. You know, I—I can't blame you for being *slow* (ph) about the thing and for wanting to think about it. But unfortunately we've got like a limited reasonable opportunity here, The things—the thing is going down now. This—this is it. I mean this is—this is the time we're giving you an opportunity to—to deal with this thing. And I I know you're going to do the right thing. I mean I know that when the thing happened originally when Dixie got killed, it wasn't because

you planned it, it wasn't because you wanted it to happen, you loved her. That—that—that's the central issue. You loved her. Because of that whatever happened out there happened not because you wanted it to, not because you set out to have it happen, but because she brought it on. She had to do something so outrageous, I mean she stole \$7,000 before and you didn't kill her then. I mean you slapped her around a little bit, right? So it had to be something worse than that. Now I don't know whether she said yeah, I've been sleeping around town on you this whole time or yeah I don't—I don't know what that us. Only you can tell us that [65] right now. And if you tell us those things I can promise you, I can give you my solemn word that I'm going to do everything I can to prove that the way you told it to me was the way it really happened. And I'm asking for a chance to do that because I don't want to see an injustice be brought down on you. You know, you may think that sounds a little foolish and a little altruistic. But that's the way I am. I'm in this job because I—I believe in it. I believe that—that if I'm doing this job, then I know it's gonna be done right. It's not going to be some t.v. cop on there that's out for glory and just out to get people. I am not in it for that. I'm in this job because I want to see—(indiscernible) I want to see you—that—that my place in this world is a safe place to live. And that when bad things happen like happened in this case, when bad things happen that we can maybe prevent them from happening in the future to somebody else by knowing why they happened this time. Maybe there's something that somebody could have done to stop this thing from happening. And I don't know. I—I hope there was. And I—you'll never—you know, you'll never get over that. I know that. It's a thing you've got to carry for ever and ever. But I want to prevent this from happening to anybody else. And that's one of the reasons that it's so important to me right here today to find out the truth about what really happened. I mean I—

[66] I have no question that all the forensic analysts all the experts in these things, they're gonna prove all those whys. You know, they don't prove those hows and whats and wheres, they're gonna prove that yeah, it happened and that Carl was there and Carl is responsible and Carl did this thing. But they'll never will prove without your help to look for those other things, the human factors. You and we can do—we're great at some things. You know, we're so good at those forensic things you wouldn't believe it. I'm constantly amazed by what these lab guys do. We've got neutron activation analysis, we've got this luminal stuff, I mean it's like magic to me. I went to—I went to a thing once they did, somebody had been—been—been shot and there had been a pool of blood on the floor and they had washed the floor. They'd cleaned the blood up and they took fluid out and they spray it, like a little spray of liquid. They sprayed it on there. He turned off the lights, they put on this fluorescent light and they had the shape of the pool of blood right on the floor. I'm just a—I'm just a cop. I'm no genius. I'm—I'm—but these guys are wizards. And I'll tell you, the wizards are working now. They're doing their magic. And—and I know from past experience that what there is there to find, they're gonna find. There's just no question about that. What there is already that's been found, it's just—I mean (indiscernible) these things are just—they just—they just point to you. I'm—I [67] don't want to tell you I'm begging with you, but I guess I'm imploring you, I'm encouraging. I'm saying this—this is the time. This is really getting down to the real *nut* (ph) cut. This is where it take the real card, to step forward and saying yeah you're right. I was there. I did this thing and yeah, I got rid of her body and this is why it happened. It didn't happen because I wanted to kill her, it didn't happen because I planned to kill her, it happened because she did this and it got out of hand. Only you can fill in that gap though, because only two people who knew those things—there's

Dixie and she can't tell us. And if you're not—I'll bet that if there was something you could do and that you could have done that night to bring her back from the dead and to cause her to rise up again and live, you would have done it, no matter what, because you loved that woman. You loved Dixie. You didn't want to see her die. But it happened and you've been stuck with it. That's her final revenge, that's the final time that she screws you. She left you stuck with this fallacious mess that she brought on. And I'm asking you to do that hard thing. I think you've got the courage to step forward and explain what really happened. I really do, otherwise I wouldn't waste my time on you. You know, I—I could be out there with these forensic guys doing their thing. But frankly, you know, the thing that I worry more about [68] in these cases is (indiscernible). That's my specialty. You know, I could do the forensic stuff but I—I don't want to. What I want to do, I want to find out why this thing happened. I want to make sure it doesn't happen again. I want to—I want to know the truth about it. And only you can do that. Now I think that whatever happened out there, that I can be sure that you loved Dixie and that you didn't want this thing to happen. And

A I didn't want whatever happened to happen.

Q Well you did it. There's no question that you killed Dixie. Let's get passed that. I mean that's—we've got to get past this hurdle here. You know, I'm sure that you're sorry for what you did out there. I'm sure of that. Are you sorry that you killed Dixie?

A I didn't kill her.

Q But you did. That's the problem here, Carl. Now I—I thought that you—you were courageous enough and had enough courage to deal with this thing. But I'm beginning to—to reconsider that. From what everybody told me I thought you were the kind of person that was going to do the right thing, who was going to be honest

about this thing and to do the thing that's for your best interest.

Q2 We all make mistakes.

Q Right now. But ain't that the truth. If I could go back and take back some of the things I've done. I'd do it in [69] a flash. But unfortunately life isn't like that. But if we make that—you know, if we do something and it's done, we say a word and we can't pull it back. I don't know what it was that you did that night that was so bad that this thing happened. And I don't think that—that she's—you know, I—you could imagine it in a couple of different ways this thing. You could have said, okay the two of you are standing there and she said something and you grabbed a knife and kill her. I don't believe that, because that—that just doesn't make sense. What makes sense to me is that something happened, she said something, she does something and it starts out like it has in the past, starts out with a little slapping around or something, because you just something to her already, I mean you hit (indiscernible), "Don't say that to me." I mean I don't know, something like that and then she fights back and then she grabs the knife and—and it's—the donnybrook is on. At that point you're not thinking as a human being, you're not thinking, gees, I'm gonna do X, I'm gonna do Y. You're reacting. You're—it's happening so fast that your animal instincts or the parts of you that believe in survival, believe in life that when you're threatened you respond, take it. And if that's what happened, if that's the way it went down, then we need to know that, because that's not that first degree murder. That's not premeditated. [70] I mean that's not gees, I'm planning to do this for months or days, I'm getting paid to do this, I expect to get something. You didn't expect to get anything out of this. Jesus, I mean you stood to lose everything. Right? You're not—you're not doing this for gain, you're not doing this for hate, whatever happened because you love her. Because love and hate

are so close together, anger and love is so close it can flip from one to another. You can be so much in love with somebody that when they say something that hurts her, and they may not even know how bad it hurts you, but it's like a knife in you and it causes an anger, I mean it causes that love just to flip (indiscernible) on anger. And it goes back and forth. And it can. And I know that. I mean I recognize that. And I can put that into words and explain it to other people so that they understand it, so that the DA understands it, so the court understands it, everybody who's going to deal with this thing, can understand what really happened. But before I can do that I can't do it on speculation, I can't speculate to those people that this is what I think might have happened, because there's three or four might's have happened. What I need is, is I need your help on this thing to make sure that the truth is—comes out. That you only get blamed for what you do. That she takes whatever portion of the responsibility she deserves. If she brought this thing on, [71] if it was self-defense on your part, then I need to know that, because quite—quite frankly, if that's the way it went down, that's something like what happened, then that's a whole lot different from if she's got her back turned and you just say well the hell with her, I'm—I'm tired of this bitch, I'm gonna kill her. Well that didn't happen. I mean that's—that's just something that's just not true. That's not—I mean that's just—that's not you, you know. Because there are people like you, lots of them, hundreds of them—myself included—that have a temper. I mean their own—there's people in this office who'll tell you that—that they—they get to me and the only people who get to me—the public doesn't get to me, somebody can come off the street and call me anything they want, that's not gonna bother me. But if somebody close to me, like if Joel here, if Joel came to me and said something really hurtful to me, that would hurt me. I—I might lose my temper on that and I might shout at him

or I might slam (indiscernible) or I might throw the telephone off on the floor, because I have that kind of a temper. But only people who are really close to us have that kind of power over us. And that's what happened here. I mean Dixie is the woman you love, she's the woman you gave five years of your life to. And even though—even though she's wronged you before, she's taken off, she's stolen [72] from you. it'll never come back. I mean you loved her, you know, more than any of us can ever understand really I think. Because you let her come back if she did all these things. No matter what she did to you you were willing to give her another chance, just to—just to have the lady back. And you didn't—you didn't set out to do this thing, it just happened. But whatever she said, whatever she did was that—was that thing that was so personal that hurt you so bad that you just—it just happened fast. I mean it (snaps fingers) like that. And I—I gotta believe that because I think that there's worth in every person and there's worth in you. Because this bad thing happened to you doesn't mean that you should just be thrown away, doesn't mean that you shouldn't have any self-respect, doesn't mean that I shouldn't (indiscernible) up to you. You're still a human being. You're still a person. You've got warmth, you've got desire, you've got the rest of your life which you deserve to be able to lead. Now I'm not saying that—that you'll never pay any penalty for what happened. I can't tell you that. I'd be a fool to. You wouldn't believe it if I did tell you. But what we're talking about here is we're talking about the difference between throwing the rest of your life because you don't have the courage to step forward or being honest about it.

A It wouldn't make any difference if I did.

[73] Q And stand—yeah it would; it'd make a hell of a difference. It'd make a hell of a difference.

A Well you just—just told me, you're not the DA.

Q Because we would. . . .

A You can't be the one who decides what. . . .

Q Yeah, but what we're doing here is I'm the guy who has to go to the DA and tell him, hey this is what he said and we've gone on, we've proven this by the forensic evidence, we've proven that he said that it happened X, Y and Z and that's what happened. The difference is—is everything. The difference is between throwing away the rest of your life. I mean if the DA just decides in his own mind because we don't have anything, that if Carl won't talk, that must mean he was that cold-blooded murderer. He's hiding something. He's hiding it because it was worst than what I think it was. Then he (indiscernible) puts you away and you could be—I mean it could be everything, it could be life.

A Really.

Q Ninety-nine years, that's all—that's life.

Q2 Right.

Q If it's not that. I mean it could be—I mean we're looking at negligent homicide and manslaughter I mean we're talking two years, three years, five years, a fair amount. You know, you get out on—free on parole. [74] We're not talking about the rest of your life. We're talking about just a little period of—and then you go on. But the trouble is, right now is the time when we've got to make the decision of which way we're heading on this thing. I mean if that's what happened, if you deserve only a little bit, I mean if you deserve to go to jail for your entire life because you planned this thing, then I guess my sense of honor would say that that's what you ought to do. Right? But if you didn't, if that's not what happened, then it is important, because right now it makes all the difference in the world. It makes a difference between are we talking that first degree, cold, calculating, actually amoral psychopathic person, or are we talk. . . .

A You guys already know it wasn't that kind of murder anyway.

Q But I can't prove it. I—I suspect it's not. I don't think it was, but only can tell us exactly what happened.

Only you can make it apparent. I mean we—I can speculate that there must have been something that happened that she said or did that—that started this thing off. I mean I can speculate on that. But I don't know you well enough, I don't know her well enough; I can't ask her the question to know what the bad thing was. But if you can share that with us, if you can make us understand, if you can make me understand why whatever it was is so bad, because I can explain that, I can make other people explain [75] it. I mean I—you're not the kind of guy who writes long books and—and who's real wordy, says a lot of things, and puts things into fancy words so that guys like that DA and judges and people can understand. You're just an ordinary guy like most of us, right? Well one of the things I'm trained to do, the thing that I do is I write and I'm able to put into words so that they'll understand, to convince them if you can convince me that it didn't happen, a cold, calculating killing, you know, I will go to the max for you to prove that the way you say it happened is what happened. But I have to have your trust. And I—I know that's—that's a hell of a thing to ask of a guy, because you've watched t.v. and seen all this stuff. Remember, t.v. is not real. It's—you know, we've got to flush all that stuff out of our mind and try to remember that right now we're talking really about your whole life. Now there's nothing we can do to bring Dixie back—that anybody can. You feel the loss, you—you've lost a woman who you love, her family is feeling the loss of course, but all those things we can get over. I mean eventually you'll get over it. Dixie is not suffering any more. And whatever happened to her, she's not in pain; that's over. All right. So what we're dealing with now is we're dealing with what's left over. And that's you. And you're the lose end, you're the person who has to live with [76] this thing for your entire life. You're the person who has to make the decision now whether or not to just take your chances and hope—

hope like hell that the conclusion that the DA and people come up with was that this wasn't first—you know, first degree murder, a cold, calculated thing. Or the alternative, if you can be honest about this ting, and finally explain that's what happened, to make us understand the why, in what way Dixie was responsible, in what way she caused this thing to happen, because I—everything you've done in the past. . . .

A Well you can't punish Dixie. I mean you know. . . .

Q No, but there's no reason why you should be punished for what she did, right? I mean she can't be punished. You're right, but is there any reason why if she did something wrong, if she's responsible for this thing, that Carl should pay a terrible penalty for what she did? I don't think so. I mean I—I don't know the circumstances. I think—I think that there are—there are things going on and there are explanations which you can make which are going to make a tremendous difference. They make the difference between being that cold, calculating killer who—who people just won't have any feelings for, you know, they say we ought to have a death penalty for, to the—to the other situation, the situation where it's just a fight that gets terribly out of hand. [77] The things that go bad and that things that—things—you know, A led to B, and B led to C and—and before anybody knew it, before anybody had time to think about it, it was over. And if that's the way it happened—I suspect it is because I've looked at your past. And I suspect that's what happened. I don't know that. I don't know that until you're honest with me and you come forward and tell me exactly how it happened, so that you can explain it, so we can understand it, so we can make the best deal for you. I mean that's really why we're giving you the opportunity to do that. You can look at it—you can look at it that way. It's just like we're playing "Let's Make a Deal." We're here right now, we're willing to listen to you right now. We will

give you the benefit of the doubt. Because whatever you tell us right now I have no reason to (indiscernible), okay? And what I'll do is I can assure you that I will do everything that's in my power to find this evidence, to the other people we'll talk to to prove that whatever you tell me, however it really happened is truly believable. I will do that for you. I can—I can actually guarantee you that. But only you can tell us the exact why this thing happened. And that's—that's what we're here for. We're passed the how, passed the where, we're passed the what, the when, we're out on the how. And that's the hardest part because [78] that's motive, not really motive. It's the intention, it's beyond motive. It's—it's what happened in that very instant. I—I had a car wreck once. I was going to a burglary, police car, red lights and siren, right in the middle of the night and all of a sudden I had a tire blow out. And first I ended up in this ditch and (indiscernible) and then I'm across the road. I take out sixty feet of guardrail, flip over the guardrail, and end up about half way into the Tanana River. Right? That thing was so intense that I—I have pictures in my mind—not like a movie, but individual stills and I—I can say there's that sign I'm about to hit, there's that guardrail I'm about to hit, there's the car going upside down over the guardrail, there I am down at the bottom of the hill. It's so intense, it's burned into my memory. But I know exactly what happened, I know what was going through my mind then. I can remember it. And that's why this is so important, because I know—several years ago, I know that what happened to Dixie is burned into your mind, that you remember exactly what happened, and that you can explain to me as hard as it may be what happened, how it happened and what led up to it, what she did that was so bad to bring this thing. Because there's—it's her fault. When you get right down to it, I—I think that probably you'll be able to convince me that what happened was entirely [79] her fault, that you were—you were doing what you thought was

right. Gee, you get—you'd been out drinking. That's no big deal. I mean sure, (indiscernible) gone a couple of hours, you're out drinking you come back, she says, I'm leaving, take me—take me over to the place, I want to get my stuff. What did you do? Took her out to the place. You're going along with her. I mean you love her enough that you're going along with this thing. She says, yeah I'm gonna back up my stuff and and—and something goes bad. And I don't know what it is. While you're out there with her, she continues poking at you, whether she's—and I don't know what that thing is. What's the thing that started this fight and how that fight progressed and it got worse and this thing happened. I—I believe in my heart that you're sorry that you killed Dixie, that you didn't want to do it that way. I mean I know you are. I just have to believe this. Because to believe otherwise is to believe that you did the cold calculating killing, that you don't care about anybody. And I know that's not true because you cared about Dixie, more than anybody else in your life.

Q2 We know that.

Q And that she brought this thing on. And it's her fault if whatever happened out there, she started that, I really believe that. Or maybe you started a little fight and she's [80] the one who escalated it with you on things. Because there are no—you know, nobody that I talked to says, yeah, Carl (indiscernible) picks fights, Carl starts fights. People say well no, Carl kicks back until somebody wrongs him and then he takes action. He's a man of action. And in this case you're a man of action. You're—you're a hunter. You work in the woods, you're a miner. You're a person of action. You're a physical person. And when this thing happened, whatever happened happened so fast that there was a threat to you that was so serious that you responded to it, that you did instinctively what you defined for you to do. It wasn't something that you thought through and said, yeah let's see, about 9:00 o'clock tonight I think I'm

gonna kill Dixie. You didn't do that, I don't believe. Maybe you did. If you did do that I think you'd better not tell me. Okay? If that's what happened, I think you're doing the right thing, you'd better not talk about it. But I don't think the chances are that that's the way it went down is right, because that's not the way you've been in the past. Okay.

Q2 You've got to believe we're here to help you. You've got to believe that. It may not look like it.

Q It's—it's hard.

Q2 But you've got to believe that.

Q That's a hard jump to make, isn't it, because you've got to [81] to trust us and that's—that's a hard thing, saying, geez here I am with a cop and I've got to trust him, I've got to tell him about this terrible thing. But I can promise you as I've promised you before, no matter what we talk about today you'll walk out of here. You'll walk out of here just the same way you came in. (Indiscernible). No matter what. I guarantee you that. Absolute. positively.

A No matter what you aint gonna arrest me?

Q No matter what.

A What I tell you, you aint gonna arrest me.

Q That's right, absolutely. Because we don't believe you're a cold-blooded killer. If you—if I thought you were that cold-blooded killer, well maybe I would feel differently about that, but I'm not gonna arrest you no matter what, I promise you that. And that's an absolute promise.

A Why wouldn't you?

Q Why should I? You're—You're not—Dixie is dead.

Q2 You're not gonna do it again.

Q You're the per—Dixie was the person that you loved enough that she could hurt you enough to bring this thing on. And she's probably the only person that you cared about enough to get to you that way. Because I have to, because I think that you're basically a good person and the circumstances which brought this thing

about are never gonna happen again I hope. I mean you certainly aren't [82] gonna to let yourself get into a position like that again. And I told you and I'm ask—I'm. . . .

A It was a *real big* (ph) mistake, that's all.

Q There's no question—well that's—that's the way to look at it, then actually you might say it's an accident, in a way, an accident because it's not what anybody intended. You didn't get into this row intending to kill her, you didn't do whatever happened intending to kill her. If you could have waved your hand over her, you would have done it and brought her back. But you couldn't do those things.

Q2 We can't ever bring her back. But maybe we can let her rest a little bit easier to know that the truth came out. And let you rest a little easier because you loved her so much. We know it's not easy. Goddam, it could never be easy. We're asking you to help yourself, and to help Dixie by telling us the truth. Tell us the why, what happened that was so bad that night, something was terrible that night.

Q You're—you're the kind of person who didn't care. If you didn't—if you didn't care about Dixie and you didn't love her then this thing wouldn't bother you, wouldn't eat at you, you'd just go—forget about it and never think about it again, but that's not the kind of person you are. That's one of the reasons why you're not staying out there now. Because to be there brings back the memories, but you [83] can ever wipe those things out.

Q2 It aint gonna be easy, Buddy but it's the right thing to do.

Q And right now it's the thing you can do to help yourself. I mean you know, I'm not trying to sell you a bill of goods here. I'm giving you an opportunity which I don't see how it'll ever come again because from my experience that this—this is the best opportunity. This is the time when people will believe you, because

you haven't had time to—to go away and concoct some story to make you look good. The thing that you'll tell us today, the thing that you're gonna be able to convince us, is the truth of what really happened. Because I have a—I think I have a real (indiscernible) in this business. And it's founded on two things, one, on the "kiss" principle, "Keep it simple, Stupid." When things happen, they're not complicated, they're not like t.v., they're not—you know, wild and crazy and strange people come—coming out, a hit man and that kind of stuff, they're simple. They're understandable. And the other thing is that when you hear it, when you hear truth, when you figure out exactly what really happened, you know it when you hear it, it has that ring of truth. It's like a bell that rings (indiscernible). Everything falls into place. It makes sense with Dixie's personality. It makes sense with Carl's personality. It makes sense with the physical evidence [84] and the things we've seen. And I—I believe that you're gonna tell us that. You know, I believe that you're gonna be honest with us and explain to us exactly what really did happen.

A So then you're gonna let me walk out of here?

Q I'm gonna let you walk out of here.

Q2 Because we don't think you'll do it again.

Q True. Let me—we turn this on. Let me just put the time and date and who's here and stuff. It's 12:30 p.m. It's Monday, September 15, 1986. This is Sergeant Stockard. With me is Joel (ph) Hard and Carl Thompson. We were just—we've been talking here for, oh I guess about an hour or so, an hour and 15 minutes. Carl has asked me to turn on this little tape recorder and I think in particular he wanted me to—to make sure that appeared on this tape the fact that I have told you repeatedly today that no matter what you tell me today about what really happened out there with you and Dixie, that I'm gonna let you walk out of here today, the same way that you walked in, and that mean. . . .

MR. HARD: And I'm repeating.

SGT. STOCKARD: That's Joel Hard too. I'm

MR. HARD: Any other trooper (indiscernible—interrupted)

Q Nobody is going to arrest you here today. You're gonna walk out of this building the same way that you walked in. I think you're going to walk out of here with a sense of relief be- [85] cause the—the terrible thing you've been carrying with you all this time is—is going to be lifted from you. You're going to finally have shared it and finally have tried to make people understand.

Q2 It aint gonna be easy but you can do it.

Q I'm going to let you hold this. The red light, of course means it's—it's recording. I'm not here to play tricks with you.

Q2 We're not liars and we're not (indiscernible). We're up front and we're honest.

Q I'm not here to—to tell lies to you or to do. . . .

Q2 And that's what we're asking you to be is up front and honest. Tell us the why, Buddy.

A Well—well. . . .

Q I know it's hard. Okay, what can I tell you, you know?

Q2 She meant the most of anybody in your life. Hlep her and help you by telling us what happened.

A Because I—I don't think you guys are going to believe me to tell you the truth.

Q2 We'll believe you.

Q Well the assure—you've got our guarantees, you're going to leave anyways no matter what, right? And that's absolutely the truth. There's no question about that and I will. . . .

A As long as you let me go take care of my stuff is all I'm asking.

* * * *

[101] Q You know, we'll have to—they'll have to work that out through the—through the system. And what

they'll probably do is come up with a summons for you and—and at that point you'll have to come in and answer it. But you're not gonna do this to anybody else. This isn't—this isn't a cold-blooded killing. You're not a danger to anybody, are you?

A No.

Q No. And you'd never let yourself get into that position again either, I know that.

A No, it's an expensive lesson to learn, a hard one, I mean.

Q Oh God, I guess.

A Plus the nightmares and everything. . . .

Q I know. I know.

A you know, you can't even imagine.

* * * *

[106] (Witness apparently reading waiver—pause)

Q Is that okay then?

A Yeah.

Q All right. Okay. Let's—why don't you sign as a witness, Joel and then I'll sign too. (ph) I guess the best thing—the best thing to do would be just ask you to drive it around and put it in our garage where it'll be safe and then, as I say, Joel can give you a ride—ride home or we can call a cab or call a friend. Whatever—whatever you want.

Q2 Call a friend for you?

A All my friends over there, my girlfriend, she don't have a vehicle.

Q Well, do you want us to just run you over there?

A Sure.

Q2 How about if I just give you a ride home.

A Have my dog with me.

Q Oh yeah, we'll take the dog home. That's—there's no problem.

Q2 You bet. I've had dogs in my car before.

Q Yeah I saw him a little bit ago.

Q2 He's almost human.

Q Yeah. Okay. Let's—let's go on out here and. . . .

Q2 I got your keys so I'll just walk you out through this.

Q Okay.

Q2 We can go this way, Carl.

* * * *

SUPREME COURT OF THE UNITED STATES

No. 94-6615

CARL THOMPSON,
Petitioner

v.

PATRICK KEOHANE, Warden, *et al.*

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ON CONSIDERATION of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted.

January 23, 1995
